Kosher Chicken From Canada

Investigation No. 731-TA-1062 (Preliminary)

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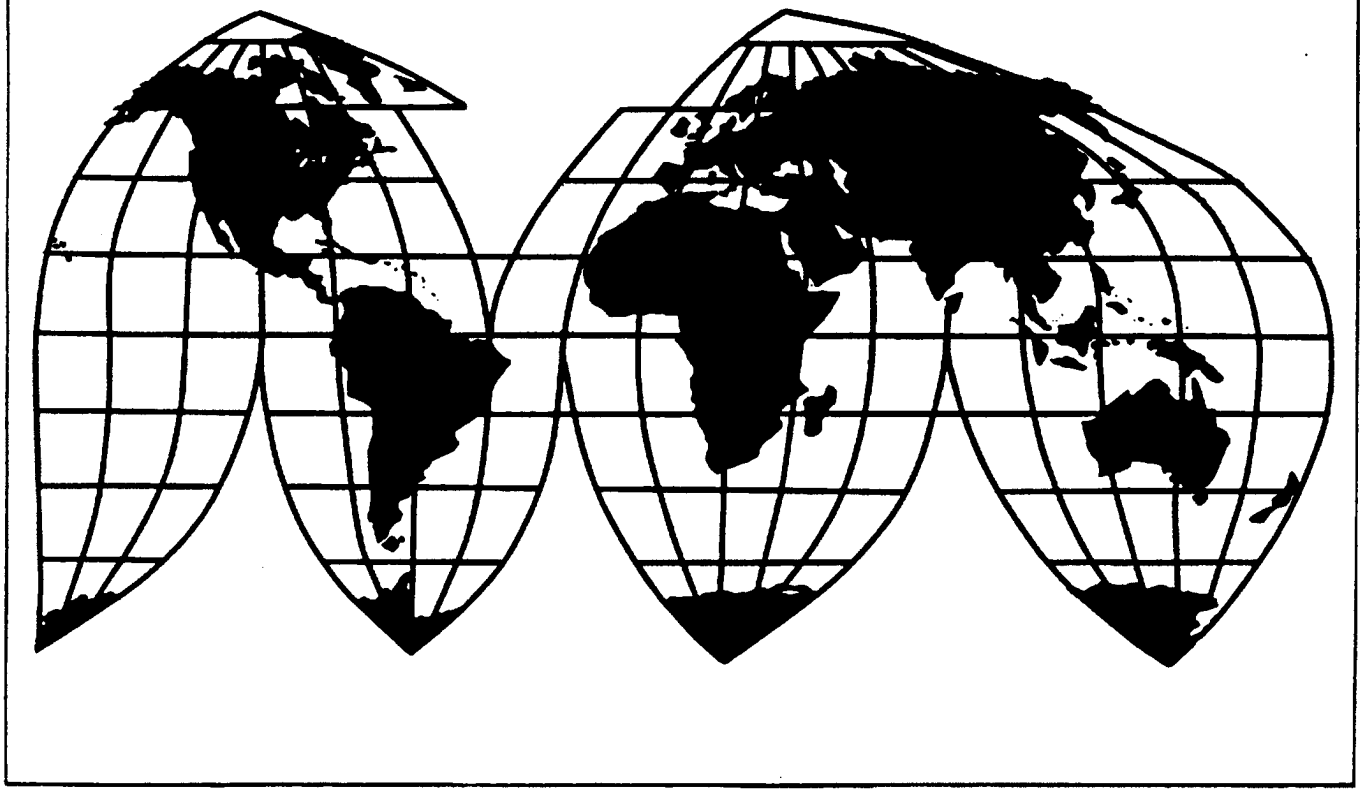
U.S. International Trade Commission



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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1062 (Preliminary)

KOSHER CHICKEN FROM CANADA

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of ready-to-cook Kosher chicken and parts thereof (kosher chicken), provided for in subheadings 0207.11.00, 0207.12.00, 0207.1300, and 0207.14.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[2]

BACKGROUND

On December 1, 2003, a petition was filed with the Commission and Commerce by Empire Kosher Poultry, Inc., Mifflintown, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of kosher chicken from Canada. Accordingly, effective December 1, 2003, the Commission instituted antidumping duty investigation No. 731-TA-1062 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of December 11, 2003 (68 FR 69088, December 11, 2003). The conference was held in Washington, DC, on December 22, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Marcia E. Miller made an affirmative determination.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of kosher chicken from Canada that are allegedly sold in the United States at less than fair value ("LTFV").[1] [2]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the subject imports.[3] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[4]

The Court of Appeals for the Federal Circuit has stated that the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations and that the "reasonable indication" standard requires more than a finding that there is a "possibility" of material injury.[5] It also has noted that, in a preliminary investigation, the "[t]he statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry."[6] Moreover, the Court of International Trade ("CIT") has reaffirmed that in applying the reasonable indication "standard for making a preliminary determination regarding material injury or threat of material injury, the Commission may weigh all evidence before it and resolve conflicts in the evidence."[7]

As we discuss below, we find that the record of this preliminary investigation contains clear and convincing evidence that the domestic industry producing kosher chicken is neither materially injured nor threatened with material injury by reason of the subject imports.[8] We note that staff has collected complete information with respect to domestic production, Canadian production, the domestic industry's condition, imports of subject product, and pricing data representative of commercial shipments.[9]

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[1] Whether the establishment of an industry is materially retarded is not an issue in this investigation.

[2] Commissioner Miller finds that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of kosher chicken from Canada that are allegedly sold in the United States at LTFV. See Dissenting Views of Commissioner Marcia E. Miller. Except as otherwise noted, she joins in sections I, II, III, IV, V.A. and V.B. of these Views.

[3] 19 U.S.C. § § 1671(b)(a) and 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Found. v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int'l Trade 1999) ("Ranchers-Cattlemen").

[4] American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[5] American Lamb, 785 F.2d at 1004.

[6] Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[7] Ranchers-Cattlemen, 74 F. Supp.2d at 1368 (Ct. Int'l Trade 1999).

[8] Commissioner Miller does not join in this paragraph. Commissioner Miller finds that the pricing data gathered by the Commission may not adequately reflect competition between the subject imports and the domestic product.

Although we recognize that we might obtain some additional evidence in any final phase investigations, we see no likelihood that any evidence we obtain in any final investigation would change our findings that the domestic industry has not been materially injured or threatened with material injury by reason of subject imports from Canada.

II. BACKGROUND

The product within the scope of investigation is ready-to-cook kosher chicken and chicken parts (thighs, drumsticks and breasts). Kosher chicken consists of ready-to-cook chicken, whether fresh, chilled, or frozen, and whether whole or cut up in pieces, that has been certified as Kosher, *i.e.*, which fulfills the requirements of the Jewish dietary laws, or kashrut.[10] The investigation does not include non-kosher chicken, which is processed by wholly different firms from those who process kosher chicken. Kosher chicken is typically purchased for consumption by observant Jews and kosher-keeping institutions (caterers, hospitals, restaurants, schools, and synagogues) that follow kashrut.[11] A small percentage of the product is also used captively by the U.S. processors in the production of such downstream kosher products as processed (fried) chicken, chicken bologna, chicken franks, and chicken nuggets.[12] The majority of both domestic production and subject imports is sold to distributors, with the remainder shipped directly to kosher-certified retailers, kosher-certified institutions, and non-kosher retailers.[13]

The petition was filed by Empire Kosher Poultry, Inc. ("Empire"), the *** U.S. processor of kosher chicken. The three other U.S. processors of kosher chicken filed letters indicating their support for the petition.[14] Empire is located in Mifflintown, Pennsylvania; AgriProcessors is located in Postville, Iowa; Vineland is located in Vineland, New Jersey; and David Elliot is located in Scranton, Pennsylvania.[15]

Domestic production accounted for over 90 percent of the U.S. market for kosher chicken during the period examined. The subject imports from Canada accounted for the remaining share of the market. Canada was the only source of U.S. imports of kosher chicken.[16] Approximately 22 firms import kosher

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[9] The Commission has obtained usable trade and financial data on U.S. operations from three domestic producers representing *** percent of U.S. kosher chicken production in 2003; usable pricing information was obtained from two domestic producers representing *** percent of production, and from both Canadian producers representing 100 percent of Canadian production. Confidential Staff Report, Memorandum INV-BB-007 (Jan. 8, 2004) ("CR") and Public Staff Report ("PR") at Table III-1, CR at III-1, V-5 (n. 4), and VI-1, PR at III-1, V-3, n.4, and VI-1.

[10] CR at I-3, PR at I-2.

[11] CR at I-5, PR at I-4. To a much lesser extent, kosher chicken is also purchased by Moslems, Seventh-day Adventists, and health-conscious consumers whose perception is that kosher food is of higher quality. *Id.*

[12] CR at I-6, PR at I-4. Domestic producers captively consume only *** percent of their kosher chicken. CR at III-8, PR at III-6.

[13] CR and PR at Table I-1; CR at I-11, PR at 1-8. An *** amount was also shipped to non-kosher institutions.

[14] Letters of December 23, 2003,from Vineland Kosher Poultry ("Vineland") and AgriProcessors, Inc. (AgriProcessors"); Letter of August 11, 2003 from David Elliot Poultry Farm ("David Elliot") (Petition at Exhibit 8).

[15] CR and PR at Table III-1.

[16] CR and PR at Table IV-3.

chicken from Canada, none of which were parties to this investigation.[17] The respondents in this investigation are Canadian kosher chicken processors Chai Poultry, Inc. ("Chai"), located in Toronto, Ontario, and Marvid Poultry Canada ("Marvid"), located in Montreal, Quebec.[18] Chai and Marvid are the only known Canadian processors and the only known Canadian exporters of kosher chicken.[19]

III. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[20] Section 771(4)(A) of the Tariff Act of 1930, as amended (the Act), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[21] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation ... ."[22]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[23] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[24] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[25] Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what

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[17] CR at I-2, PR at I-2.

[18] CR and PR at Table VII-1.

[19] CR at VII-1, PR at VII-1; Transcript of Preliminary Conference held on Dec. 22, 2003 ("Conference Tr.") (Revised and Corrected Copy) at 130.

[20] 19 U.S.C. § 1677(4)(A).

[21] *Id.*

[22] 19 U.S.C. § 1677(10).

[23] See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[24] See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess., at 90-91 (1979).

[25] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 249 at 90-91 (Congress has indicated that the domestic like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

domestic product is like the imported articles Commerce has identified.[26] The Commission must base its domestic like product determination on the record in this investigation. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.[27]

B. Product Description

Commerce defined the imported merchandise within the scope of this investigation as:

> ready-to-cook chicken from Canada, whether fresh, chilled or frozen and whether whole or cut-up in pieces, that has been certified as Kosher or Glatt Kosher.[28]

Kosher chicken wings, if unattached to any other chicken part, are excluded from the scope of the investigation, as is "offal," such as necks, gizzards, livers, and hearts. Also outside the scope of this investigation are cooked kosher chicken and chicken parts and ready-to-cook non-kosher whole chicken or chicken parts. The merchandise subject to this investigation is classifiable under subheadings 0207.11.00, 0207.12.00, 0207.13.00, and 0207.14.00 of the Harmonized Tariff Schedule.[29]

C. Background Relevant to the Domestic Like Product

The process for killing, cleaning, inspecting, and chilling kosher chicken is different from that for processing non-kosher chicken, and requires continual rabbinical supervision. In kosher facilities, specially trained religious Jews perform the slaughter process, and kill each bird individually with a specially designed blade that must be free of nicks or cuts.[30] As no heated water or flame may be used in the kosher slaughter process, the removal of feathers in kosher chickens is difficult and time-consuming.[31] Kosher processors cannot singe remaining feathers by the use of an open flame.[32]

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[26] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission's determination of six domestic like products in investigations where Commerce found five classes or kinds).

[27] See Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp.2d 1298, 1304-05 (Ct. Int'l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

[28] Notice of Initiation, 78 Fed. Reg. 75486 (Dec. 31, 2003). The term "Glatt Kosher" is often used generically to imply that a product is "kosher without question or alternatively that it meets a higher standard." CR at I-4, PR at I-3, *citing* www.ou.org./kosher/primer.html, retrieved December 12, 2003. All of the kosher chicken processed by both U.S. and Canadian processors is considered to be Glatt Kosher. CR at I-4, PR at I-3; Conference Tr. at 26-28.

[29] Notice of Initiation, 78 Fed. Reg. 75486 (Dec. 31, 2003).

[30] CR at I-7-8, PR at I-6; Petition at 4-5. This aim is to kill the bird as humanely as possible. Conference Tr. at 11-12.

[31] CR at I-8-9 & n.37, PR at I-6 & n. 37; Petition at 5-6. Hot water or heat cannot be used because they would congeal the blood and interfere with the mandate to remove as much blood as possible. Conference Tr. at 12.

[32] Petition at 6.

The Canadian producers as well as the domestic producers predominantly distribute their kosher chicken through wholesalers who specialize in kosher products.[33] Those distributors, some of whom also sell non-kosher products, maintain separate kosher and non-kosher divisions with rabbinical supervision to ensure that there is no intermingling in the same facilities or on common trucks.[34] Bulk-packed chicken, which accounts for most shipments of kosher chicken from all sources,[35] must remain under direct rabbinical supervision at all times, and cannot be stored, shipped, or sold alongside non-kosher products. In addition to sales to kosher-certified distributors, processors sell their chicken in bulk packs directly to kosher retailers or kosher institutions.[36] Non-kosher retailers, who account for only *** percent of domestic producers' shipments, may sell pre-packaged tray packs of kosher chicken, which is labeled and tagged with the appropriate kosher certifying logo.[37]

The common practice of kosher certification simplifies the practice of "keeping" kosher for observant Jews.[38] Certification is the endorsement that a product has been manufactured in accordance with Jewish dietary laws and under rabbinical supervision. There are a large number of certifying kashrut organizations or councils that follow varying standards and policies. In addition, individual rabbis can provide their own certifications. Most large kashrut organizations have registered symbols or logos that appear on food packages to indicate that the product is kosher.[39]

D. Analysis

Petitioner maintains that the Commission should find one domestic like product, coextensive with the scope of the investigation. Respondents do not disagree that the domestic like product should be limited to kosher chicken, but argue that there should be more than one domestic like product based on the type of rabbinical certification.[40] For the reasons discussed below, we find a single domestic like product encompassing kosher chicken and chicken parts coextensive with Commerce's scope definition.[41]

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[33] CR at I-10-11, II-1-2, IV-1, PR at I-7-8, II-1, IV-1; Petition at 6-7.

[34] CR at I-10, PR at I-7; Conference Tr. at 37-38.

[35] CR and PR at Table I-1, CR at I-10-11, PR at 7-8. The sales to non-kosher retailers are in tray packs; sales to kosher-certified retailers and institutions are in bulk packs. Conference Tr. at 38. Empire, which is the main supplier of tray-packed kosher chicken, stated at the conference that less than one quarter of its shipments is tray packed; the rest is bulk packed. Conference Tr. at 39.

[36] CR at I-10-11, II-1-2, PR at I-7-8, II-1.

[37] CR at I-11, PR at I-8; Conference Tr. at 38-39.

[38] CR at I-4, PR at I-3.

[39] CR at I-4-5, PR at I-3.

[40] Respondents Postconference Brief at 3-11.

[41] No party argued for inclusion of non-kosher chicken in the domestic like product, and nothing in the record supports a domestic like product finding including non-kosher chicken. There are a number of significant differences in the manufacturing aspects and in consumer and producer perceptions, as well as price differences, between kosher chicken and non-kosher chicken. Kosher chicken is processed in entirely different facilities and by entirely different firms from those who process non-kosher chicken, using different processes. CR I-7-10, VI-1, PR at I-5-7, VI-1. Kosher chicken is distributed predominantly through kosher wholesalers. CR at I-10-11, II-1-2, IV-1, PR at I-7-8, II-1, IV-1; Petition at 6-7. Processors, importers, and purchasers of kosher chicken perceive kosher chicken to be a distinct product from non-kosher chicken. See, e.g, Conference Tr. at 10-14, 81-84; CR at II-9-12,

(continued...)

We determine that the domestic like product should not be sub-divided based on the type of rabbinical certification, as proposed by respondents. The physical characteristics and use of all kosher chicken as a food product are essentially the same, regardless of the type of rabbinical certification. All kosher chicken is processed in a substantially similar fashion, although there may be minor differences in particular requirements, such as when the feathers are pulled from the bird, the frequency with which the knife is checked, and the number of birds discarded (or sold as non-Kosher) if a nick is found in the knife.[42]

Respondents assert that there are inherent differences in some of the employees involved in processing under each certification because some sects prefer slaughter and rabbinical supervision by members of their community or organization.[43] Testimony provided by the petitioner confirms that certification for a particular sect may sometimes entail use of that sect's own rabbis.[44] In particular, Empire mainly produces kosher chicken certified by the Union of Orthodox Jewish Congregations ("OU"), the largest and most commonly known certifying agency.[45] Empire testified that, in addition to its main production of OU-certified kosher chicken using its own rabbis, it also processes kosher chicken for two private labels – Alle and Meal Mart – under the supervision of a rabbi affiliated with the Satmar Chasidic sect.[46] However, these facts demonstrate the overlap between processing for the individual sects, in that Empire processes for different sects in the same facility with some of the same production workers. Moreover, the other U.S. processors use the same facilities and production workers to process chicken that is dual-certified by OU and other certifying agencies.[47]

Citing to the fact that chicken certified by a particular sect must be supervised from start through retail sale by rabbis affiliated with that sect, respondents contend that there are distinct channels of distribution for each sect.[48] However, the evidence indicates that the requirements for every sect are covered by members of the domestic industry.[49] Distributors can and do distribute kosher chicken that may bear more than one type of certification label.[50] For example, Empire sells chicken to Alle Processors, the same wholesaler through whom a portion of dual-certified Canadian product is

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[41] (...continued)
PR at II-7-8. There are significant price differences between kosher and non-kosher chicken, reflecting the additional processing, packaging, and rabbinical supervision costs. Petition at 8 and Exhibits 4 and 5; CR at I-16, PR at I-10. Given the substantial differences in manufacturing processes and facilities, limited interchangeability, different channels of distribution, customer and producer perceptions, and price differences, we do not include non-kosher chicken in the domestic like product.

[42] Respondents' Postconference Brief at 9, Conference Tr. at 41-42, 44, 47, 90-93. For example, there may be different views among the rabbinical sects as to the kosher status of chickens slaughtered prior to an imperfect knife being found. CR at I-17, PR at I-11.

[43] Respondents' Postconference Brief at 7-8.

[44] Conference Tr. at 28-29, 48-49.

[45] CR at I-5, II-2, PR at I- 4, II-2.

[46] Petitioners' Postconference Brief at 4-5; Conference Tr. at 28-29.

[47] CR at I-13-14, III-6, PR at I-8-9, III-6.

[48] Respondents' Postconference Brief at 7-9.

[49] Petitioners' Postconference Brief at 2; Conference Tr. at 13-14, 161-162.

[50] Petitioner's Postconference Brief at 4.

distributed.[51] Moreover, several U.S. processors process chicken that is dual-certified and sold through any variety of distribution networks.[52]

Statements reflecting the domestic producers' perceptions suggest that there is no clear dividing line based on type of rabbinical certification.[53] With respect to customer perceptions, there is evidence that ultra-orthodox end-use consumers, such as those belonging to the Satmar Chasidic sect, and the distributors who sell to those consumers, may perceive important distinctions based upon the type of certification.[54] There is, however, a degree to which kosher chicken with different certifications is interchangeable.[55] For example, the Central Rabbinical Congress ("CRC") certification required by the Satmar sect is also acceptable to the much larger non-sectarian-kosher-keeping household.[56]

In our view, the like product factors weigh against subdividing the domestic like product by types of certification. Any differences in production processes, facilities, and employees are relatively minor. The evidence concerning interchangeability is mixed. Although there is evidence that consumers and some producers perceive the different certifications as limiting competition, these differences do not appear to create clear dividing lines, but instead reflect pertinent conditions of competition in the domestic kosher chicken market.

In view of the foregoing, we find one domestic like product consisting of all kosher chicken, (*i.e.* ready-to-cook kosher chicken (whole and cut-up), ready-to-cook kosher chicken legs (thighs and drumsticks), and ready-to-cook kosher chicken breasts (bone in and boneless)), coextensive with the scope of the investigation.

IV. DOMESTIC INDUSTRY

The domestic industry is defined as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[57] In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[58] We define the domestic industry in this investigation to consist of all U.S. processors of ready-to-cook kosher chicken.[59] Accordingly, the domestic industry consists of Empire, AgriProcessors, Vineland, and David Elliot.

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[51] Petitioners' Postconference Brief at 4.

[52] CR and PR at Tables I-1 and I-2.

[53] See, e.g., Conference Tr. at 44, 48-49.

[54] See CR at II-4, n.7, PR at II-2, n.7.

[55] Petitioners' Postconference Brief at 3.

[56] Petitioners' Postconference Brief at 3.

[57] 19 U.S.C. § 1677(4)(A).

[58] See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

[59] In investigations involving processed agricultural products, section 771(4)(C) of the 1988 Omnibus Trade and Competitiveness Act authorizes the Commission to include farmers/growers of a raw agricultural product as producers within the domestic industry producing the processed agricultural product if certain criteria are met. 19 U.S.C. §1677(4)(E)(i). None of the parties to this investigation has raised the applicability of this provision.

V. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS[60]

A. General Legal Standards

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[61] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[62] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[63] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[64] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[65]

Based on an evaluation of the relevant statutory factors, we find that there is no reasonable indication that the domestic industry producing ready-to-cook kosher chicken is materially injured by reason of subject imports from Canada.

B. Conditions of Competition

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury or threat thereof by reason of the subject imports from Canada.

Demand for kosher chicken is dictated mainly by the amount of kosher chicken purchased by kosher-observant households and kosher-observant businesses, including hospitals, restaurants, nursing homes, hotels, schools, cruise lines, and airlines.[66] As a result, the U.S. market for kosher chicken is relatively small.[67] The data collected in this investigation indicate that overall there have been *** increases in demand for kosher chicken during the period examined. By volume, apparent U.S. consumption of kosher chicken rose somewhat (by *** percent) from 2000 to 2001, and then fell by ***

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[60] 19 U.S.C. § 1677(24)(A)(I)(I). In this investigation, Canada is the only source of imports into the United States of ready-to-cook kosher chicken. CR at Table IV-2. Consequently, subject imports from Canada accounted for more than three percent of total kosher chicken imported into the United States in the most recent 12-month period for which data are available preceding the filing of the petiti on. As such, we find that subject imports from Canada are not negligible under 19 U.S.C. § 1677(24).

[61] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[62] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[63] 19 U.S.C. § 1677(7)(A).

[64] 19 U.S.C. § 1677(7)(C)(iii).

[65] 19 U.S.C. § 1677(7)(C)(iii).

[66] CR at II-9, PR at II- 6.

[67] CR at II-1, PR at II-1; Conference Tr. at 34.

percent in 2002, for a *** overall increase of *** percent from 2000 to 2002.[68] During the first nine months of 2003 ("interim 2003"), the volume of apparent consumption was *** percent higher than it was during the comparable period of 2002 ("interim 2002").[69] By value, apparent U.S. consumption followed a similar trend, rising by *** percent from 2000 to 2001, then declining by *** percent in 2002, for an overall gain of *** percent.[70] In interim 2003 the value of apparent domestic consumption was *** percent higher than the value in interim 2002.[71]

According to respondents, the increase in demand has resulted from a rapid population growth among ultra-orthodox (Chasidic) Jewish families, as compared to stable or decreasing demand for kosher chicken from more secular Jews.[72] Empire acknowledged that any increases in demand are most likely related to higher birth rates among Chasidic Jews.[73] Because of the consequent need among members of the Chasidic community to feed large families, there is a preference toward purchasing dark meat chicken parts (leg quarters), which sell at lower prices than other chicken parts.[74] Responding to this preference by the end consumers, the distributors and retailers who purchase ready-to-cook kosher chicken for retail sales to members of the Chasidic community may focus their purchases on dark meat parts.[75]

Generally, all demand for kosher chicken in the United States is met by the four U.S. processors and the two Canadian processors.[76] There are no reported imports of kosher chicken into the United States from sources other than Canada.[77]

Kosher chicken is sold in most regional markets in the United States, and is distributed to consumers through a network of kosher wholesalers, who in turn distribute it to kosher retailers and businesses.[78] The majority of both domestic and Canadian production was sold to distributors, with the remainder mainly shipped directly to kosher-certified retailers, kosher-certified institutions, and non-kosher retailers.[79] [80] Overall, the U.S. customer base of both U.S. processors and importers is

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[68] CR and PR at Tables IV-2 and C-1.

[69] CR and PR at Tables IV-2 and C-1.

[70] CR and PR at Tables IV-2 and C-1.

[71] CR and PR at Tables IV-2 and C-1.

[72] Conference Tr. at 101-102, 142-43. See also CR at II-10 n.12, PR at II-7 n.12. Two new slaughterhouses have announced plans to open facilities, one in New York and one in Pennsylvania, to meet the needs of growing Chasidic communities. CR at III-2-3, PR at III-2; Conference Tr. at 101.

[73] Conference Tr. at 59. Another U.S. producer, however, suggested that the increases in demand are a result of perceived health-related benefits of kosher products and increased marketing of such products. CR at II-10, PR at II-6-7.

[74] CR and PR at Table I-3; Conference Tr. at 58-59, 105, 124-25.

[75] Conference Tr. at 105.

[76] One other firm -- King David, Kosher Inc. ("King David") -- processed kosher chicken in the United States for only a few months in 2002. CR at III-1, PR at III-2. In the petition, Empire asserted that the subject imports from Canada played a role in the closure of the short-lived King David processing facility. Petition at 17. At the Commission conference, however, King David's founder testified that the company's closure was due to the failure of the facility to receive a kosher certification, hence was unrelated to the imports. Conference Tr. at 95-96, 130-131.

[77] CR at II-1, PR at II-1.

[78] CR at I-1, PR at I-1.

[79] CR and PR at Table I-1, CR at I-11, PR at I-7-8. A small amount of ready-to-cook kosher chicken – *** percent of producers' shipments – is captively consumed. CR at III-8, PR at III-6. In 2002, an extremely small

(continued...)

fragmented, consisting mainly of small butcher shops, caterers, and hotels.[81] In 2002, most U.S. processors' kosher chicken shipments were in "bulk pack," under continuous rabbinical supervision, to kosher-certified distributors, retailers, and institutions.[82] The remaining shipments, accounting for approximately *** percent of domestic processors' U.S. shipments of kosher chicken, were sold in sealed "tray packs" to non-kosher retailers.[83] As noted above, tray packs are pre-packaged containers that are labeled and tagged with the appropriate kosher certifying logo.[84] Empire is the main supplier of tray-packed kosher chicken.[85] Virtually all Canadian kosher chicken sold in the United States is shipped in bulk pack.[86]

An important aspect of this industry is the need for rabbinical supervision and certification. In order to ensure that kosher guidelines are met, certification agencies monitor the processes and ingredients used in the processing and certify that kosher products are prepared according to kosher guidelines.[87] There are at least ten certifying agencies or sects that certify kosher chicken sold in the United States. The largest of the certifying agencies is the Union of Orthodox Jewish Congregations ("OU").[88] The OU serves the broad market for all kinds of kosher food and is acceptable to the majority of kosher-keeping Jews.[89] All four U.S. processors are certified by, among others, the OU, as is Canadian processor Marvid.[90]

Members of certain ultra-orthodox Jewish communities prefer to have their chicken certified to their own particular level of kosher standards.[91] The two largest such communities in the United States are the Chasidic sects of Lubavitch and Satmar.[92] Members of the Lubavitch community frequently purchase Chai-produced kosher chicken that contains a Lubavitch "pluma" (tag),[93] or kosher chicken carrying the Crown Heights Kosher ("CHK") certification used by AgriProcessors and David Elliot.[94] Members of the Satmar community generally prefer chicken certified by the Central Rabbinical Congress

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[79] (...continued)
amount was also shipped to non-kosher institutions. CR and PR at Table I-1.

[80] Commissioner Miller notes that some of these distributors are also importers of the subject product, and that the domestic industry considers these importers/distributors to be customers. See Commissioner Miller's Dissenting Views.

[81] CR at II-2, PR at II-1. There was also a very small amount of U.S. processors' kosher chicken shipped to non-kosher institutions. CR and PR at Table I-1.

[82] CR and PR at Table I-1; Conference Tr. at 38-40.

[83] CR and PR at Table I-1.

[84] CR at I-10, PR at I-7; Conference Tr. at 38.

[85] CR and PR at Table I-1; Conference Tr. at 39.

[86] Conference Tr. at 39.

[87] CR at II-2, PR at II-1-2.

[88] CR at II-2, PR at II-2.

[89] CR at II-2, PR at II-2.

[90] CR and PR at Table I-2.

[91] CR at II-2-3, PR at II-2-3.

[92] CR at I-15, II-2-3, PR at I-9-10, II-2-3.

[93] Chai-produced chicken that is exported to the United States for distribution by Royal Palate Foods has a special pluma indicating that it was processed under the supervision of a Lubavitch rabbi. Conference Tr. at 108.

[94] CR and PR at Table I-2; CR at I-15, PR at I-9-10.

("CRC").[95] Kosher chicken produced by U.S. processor Vineland and Canadian processor Marvid bears, among other labels, the CRC certification.[96] Empire also sells kosher chicken to a Satmar community under the Nirbater Rav certification.[97] Other certifications carried by U.S. and Canadian kosher chickens, and acceptable to particular ultra-orthodox communities include, for example, Kahal Adath Jeshrun ("KAJ") (used by AgriProcessors), Belz (used by Empire), and Rabbi Gornish (used by Marvid).[98]

Petitioners estimated that approximately 300,000 of the one million kosher-observant Jews in the United States are part of the various Chasidic communities.[99] Generally, non-Chasidic or modern orthodox kosher-observant Jews will purchase kosher chicken with any type of certification. Chasidic Jews typically will only purchase kosher chicken bearing the certification sanctioned by their particular sect.[100] As discussed above, however, kosher chicken bearing ultra-orthodox certifications often bears the OU certification as well.[101]

Throughout the period examined, U.S. producers operated at low capacity utilization rates.[102] Given the availability of excess capacity, those producers theoretically could meet most or all of the U.S. demand for kosher chicken.[103] However, there are several factors that limit the extent to which the domestic products actually compete with the subject imports in the kosher chicken market. As discussed above, there is at least a preference among certain Chasidic communities for chicken produced to the specific certification embraced by their particular community.[104] In addition, the record indicates that the kosher chicken from Canada enjoys a reputation for some quality-related advantages. In particular, respondents' witnesses as well as petitioner acknowledged that the Canadian chicken has less feathers, a fact that places a premium on chicken from Canada.[105] A number of questionnaire respondents corroborated the view that the Canadian kosher chicken is of better quality in that it is cleaner and featherless.[106] Domestic and Canadian processors, as well as importers, agreed that non-price factors play a role in this market.[107]

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[95] CR at II-3, PR at II-2.

[96] CR and PR at Table I-2. The two new processing facilities that are slated to open in the United States will be under CRC supervision or other supervision acceptable to the Satmar community. CR at III-2-3; PR at III-2.

[97] CR and PR at Table I-2; CR at II-3, PR at II-3. This chicken is processed at Empire's facility by Alle Processing ("Alle") using Alle's own rabbis. CR and PR at Table I-2; Conference Tr. at 30.

[98] CR at II-3, PR at II-2.

[99] CR at I-15, PR at I-9-10.

[100] CR at II-4, PR at II-2.

[101] CR at I-14, II-4, PR at I-9, II-2.

[102] CR and PR at Table III-2.

[103] CR and PR at Table IV-2. The *** processor, Empire, produces mainly for the OU market, which is not acceptable to certain Chasidic communities. CR at II-2-3, PR at II-2-3.

[104] Conference Tr. at 86-97.

[105] Conference Tr. at 30, 106, 129-30.

[106] CR and PR at Table II-1, CR at II-14, PR at II-9.

[107] CR at II-12-15, PR at II-8-10.

C. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[108]

The volume and value of subject imports increased each year from 2000 to 2002, and was higher in interim 2003 as compared to interim 2002.[109] Subject imports' share of total U.S. apparent consumption, as well as the ratio of subject imports to U.S. production, also increased each year from 2000 to 2002 and in interim 2003.[110] The quantity of subject imports increased *** percent from 2000 to 2002, although it started from a small amount, with a corresponding increase in market share.[111]

Several factors mitigate against considering the volume of imports to be significant. The subject imports have continued throughout the period examined to occupy only a small share of the market, with the domestic producers occupying the predominant share of the market. Furthermore, as discussed in the conditions of competition, there are some portions of the market in which there are limitations on the degree of competition between the subject imports and domestic product.[112] Most of the chicken processed by petitioner, the *** U.S. producer, carries only the OU label, which is not acceptable to certain ultra-orthodox communities.[113] Quality issues, as well as consumer preferences for certain kosher certifications, limit the extent of competition between the domestic product and the Canadian product.[114] These factors lessen the magnitude of the volume gain by the Canadian producers when viewed in the context of the portions of the market in which all products compete head-to-head.

D. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared

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[108] 19 U.S.C. § 1677(7)(C)(i).

[109] CR and PR at Table IV-2. The volume of subject imports increased from *** pounds in 2000 to *** pounds in 2001, and then to *** pounds in 2002. In interim 2003, subject imports volume was *** pounds as compared to *** pounds in interim 2002. *Id.* By value, subject imports increased from $*** in 2000 to $*** in 2001, and then to $*** 2002. In interim 2003, the value of subject imports was $*** as compared to $*** in interim 2002. *Id.*

[110] CR and PR at Table IV-2. In terms of volume, the market share occupied by subject imports increased from *** percent in 2000 to *** percent in 2001 and then to *** percent in 2002, and was *** percent in interim 2003 as compared to *** percent in interim 2002. *Id.* In value terms, subject imports' market share increased from *** percent in 2000 to *** percent in 2001 and then to *** percent in 2002, and was *** percent in interim 2003 as compared to *** percent in interim 2002. *Id.* The ratio of subject imports from Canada to U.S. production increased from *** percent in 2000 to *** percent in 2001, and then to *** percent in 2002, and was *** percent in interim 2003 as compared to *** percent in interim 2002. *Id.*

[111] CR and PR at Table IV-2. Petitioner estimated a ***-percent change in the volume of subject imports in the past three years. Petition at 15. The business proprietary data collected in this investigation show that, although the imports increased during the period examined, the relative change was not nearly as great as that estimated by petitioner.

[112] CR at I-14-15, II-2-4, PR at I-9-10, II-2-3.

[113] CR and PR at Table II-1 (response to question 4), CR at II-2-3, PR at II-2-3.

[114] CR at II-14, PR at II-9; Conference Tr. at 87-90; 111-112.

with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[115]

The record indicates that kosher chicken cannot be considered generally to be a fungible product. While there is a large portion of the market in which any type of certification is acceptable, another portion of the market targets particular Chasidic or other ultra-orthodox communities that, at the minimum, strongly prefer particular certifications. Quality differences, relating mainly to the number of feathers and the cleanliness of the chicken, also inform the consumers' choice of supplier. These customer preferences and quality issues are important factors in this market. The evidence indicates that price is not necessarily the most important factor in purchase decisions, but that purchasers often make the decision to purchase the Canadian product because of its perceived higher quality and acceptability to certain particular Chasidic communities.[116] Petitioner acknowledged the excellent quality of the Canadian product, in terms of cleanliness and feather count.[117] As discussed below, based on the record in this preliminary investigation, we do not find that the subject imports had significant adverse price effects on the domestic industry during the period examined.

The Commission collected pricing data for four products, including two sizes of whole cut-up kosher chicken, and fresh and frozen boneless, skinless, kosher chicken breasts.[118] In virtually all of the quarterly price comparisons, the Canadian product oversold the domestic product, in most instances by significant margins.[119] Thus, we find that there was not significant underselling by the subject imports.[120]

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[115] 19 U.S.C. § 1677(7)(C)(ii).

[116] CR at I-14-15, II-12-15 ,V-14, PR at I-9-10, II-8-10,; Conference Tr. at 109-112.

[117] Conference Tr. at 30. Petitioner testified at the Commission conference that the Canadian producers do an excellent job of cleaning their chickens, but should be charging for it. Conference Tr. at 29. Although the petition assumes that the subject imports are underselling the domestic product, the business proprietary data collected in this investigation indicate that, in fact, Canadian chicken is selling at higher prices than the domestic product. CR and PR at Tables V-1 to V-4.

[118] CR at V-5, PR at V-3.

[119] CR and PR at Tables V-1 to V-4. Information presented in Table I-3 of the Staff Report shows the domestic and Canadian producers' unit values of shipments of various types of kosher chicken parts during 2002. The information in this table is mixed, showing some types of Canadian-produced kosher chicken parts to be valued higher than the comparable U.S.-produced parts, but showing the opposite with respect to some other types of kosher chicken parts. We have not placed much weight on this information because it only shows data for one year. We further note that the 2002 unit value data for boneless breasts and whole chickens – the products for which petitioner alleged unfair price competition and requested pricing comparisons (Petition at 18) – are consistent with the overselling by Canadian producers indicated in the quarterly pricing data.

[120] One domestic processor alleged that some U.S. importers benefit from alleged dumping by importing chicken at low prices and greatly marking up the prices for sales to their customers. CR at IV-4, PR at IV-3-4. We note, however, that we have focused on the price data collected in this case which, as is the Commission's usual practice, represent prices for the first arms-length transaction in the U.S. market (*i.e.*, U.S. processors' sales prices to unrelated U.S. customers and U.S. importers' sales prices to unrelated U.S. customers). Collection of data on this basis is consistent with petitioner's statement that it charges the same price to wholesale distributors as it charges to retailers. Petition at 19. The data indicate that prices for Canadian kosher chicken were consistently higher than those for U.S.-produced kosher chicken. These data are also supported by other information on the record, including

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We further find that the subject imports have not suppressed or depressed domestic prices to a significant degree. The record shows that prices for the domestic product have not generally exhibited a downward trend during the period examined. As such, there is no evidence of price depression.

Although domestic prices fluctuated during the period, the pricing data do not show that those domestic prices fell in response to subject import price movements or that domestic price increases were prevented to a significant degree by subject import prices. Furthermore, there is no evidence that price competition from subject imports resulted in a significant cost-price squeeze for domestic producers of kosher chicken. Moreover, there is evidence on the record that suggests that domestic processors are competing aggressively on price with each other.[121] The domestic industry's ratio of its cost of goods sold ("COGS") to net sales increased by *** during the period examined, from *** percent in 2000 to *** percent in 2002.[122] In interim 2003, COGS declined ***, to *** percent as compared to *** percent in interim 2002, at the same time that the volume of subject imports increased by *** percent.[123] These data suggest that prices were not being suppressed relative to costs.

Finally, we note that there were no confirmed instances of lost sales or lost revenues due to competition from imports of kosher chicken from Canada.[124] Petitioner reported ten instances of lost sales and *** instances of lost revenues due to subject import competition.[125] These allegations were confined to 2003 and represent only small shares of U.S. production and U.S. apparent consumption during this period.[126] Responding purchasers did not confirm any of the allegations.[127]

Based on foregoing evidence, in the absence of significant underselling, price depression, or

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[120] (...continued)
information from *** importers/purchasers who reported that their purchase prices for kosher chicken from Canadian suppliers were higher than their purchase prices of kosher chicken from domestic suppliers. Memorandum INV-BB-012 (Jan. 13, 2004) at Table II-1. These importers/purchasers also reported that the prices at which they sell Canadian kosher chicken were higher than the prices at which they sold domestic kosher chicken. *Id.*; CR and PR at Table II-1.

[121] CR and PR at Table II-1 (responses to question 5); Conference Tr. at 104.

[122] CR and PR at Table VI-1.

[123] CR and PR at Tables VI-1, IV-2 and C-1.

[124] CR at V-14, PR at V-6.

[125] CR at V-14, PR at V-6; Petition at Exhibit 20; Empire's processors' questionnaire response at Section IV-D and IV-E. We note that Empire did not include its lost revenues allegations in the petition, as required by Commission Rule 207.11(b)(v), 19 U.S.C. § 207.11(b)(v). The alleged lost revenues accounted for a very small percentage of U.S. processors' shipments and of U.S. apparent consumption. In addition, one purchaser named in the lost revenues allegation stated that U.S. producers did not reduce prices in order to compete with subject imports. CR at V-14, PR at V-6. One other U.S. processor indicated generally that it had lost sales and revenues due to subject import competition, but failed to provide details or sufficient information that would allow the Commission to investigate or verify the allegations. *** processors' questionnaire response at Sections IV-D and IV-E.

[126] CR and PR at Table V-5; CR at V-14, PR at V-6. The lost sales allegations totaled $***, and involved *** pounds of kosher chicken. *Id.* For the same period covered by the lost sales allegations (interim 2003), U.S. production of kosher chicken was *** pounds, CR and PR at Table III-2, and apparent U.S. consumption of kosher chicken was *** pounds valued at $***. CR and PR at Table IV-2. U.S. producers' total net sales of kosher chicken in interim 2003 were *** pounds valued at $***. CR and PR at Table VI-1.

[127] CR and PR at Table V-5. Of the seven purchasers whom Commission staff contacted, two purchasers denied the lost sales allegations, and five did not provide a response. *Id.*, CR at V-14-15, PR at V-6. The two purchasers that denied the allegations accounted for *** of the ten allegations, and *** percent of the total quantity involved in the ten allegations. CR at Table V-5.

price suppression, we find that subject imports of kosher chicken from Canada did not have significant effects on prices for the domestic like product.

E. Impact of the Subject Imports[128]

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[129] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[130]

Although the domestic industry producing kosher chicken experienced financial problems during the period examined,[131] several of the economic indicators were already unfavorable in 2000 – prior to the increase in subject imports from Canada, and when subject imports were at even lower levels. At the beginning of the period examined, the U.S. industry had considerable excess capacity.[132] Capacity utilization was relatively constant, remaining near 50 percent throughout the period examined.[133]

The domestic industry's performance was *** at the beginning and end of the period examined, with the industry operating at ***.[134] The industry's operating profitability declined ***, by *** percentage points from 2000 to 2002, but recovered between interim periods, when operating profitability improved as *** by *** percentage point.[135] Though the industry's *** ratio spiked *** downward in 2001,[136] this change is explained by ***.[137]

The industry's sales and U.S. shipments increased between 2000 and 2001, and despite a decline

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[128] In its notice of initiation, Commerce estimated that the dumping margin for imports of subject kosher chicken ranged from 33.33 percent to 39.54 percent. Notice of Initiation, 68 Fed. Reg. 25486 (Dec. 31, 2003).

[129] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.") SAA at 885.

[130] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[131] CR and PR at Table VI-1.

[132] CR and PR at Table III-3.

[133] CR and PR at Table III-3.

[134] CR and PR at Table V1-1.

[135] CR and PR at Tables VI-1 and C-1. In 2000, the industry had a *** of *** percent. In 2001, the industry had *** margin of *** percent, and in 2002, *** margin of *** percent. Between the interim periods, the *** margin decreased from *** percent in 2002 to *** percent in 2003. *Id.*

[136] The *** ratio climbed from *** percent in 2000 to *** percent in 2001, and then dropped to *** percent in 2003. CR and PR at Table V1-1.

[137] CR and PR at Table VI-2, n.1. Because ***. CR and PR at Table VI-2, n.1. The *** allocated to kosher chicken within the definition of the domestic like product was $***. *Id.*

to *** below 2000 levels in 2002, improved in interim 2003.[138] Notwithstanding *** declines in several employment indicators, productivity remained steady throughout the period examined.[139] Inventories, both in absolute numbers and as a ratio to total shipments were low and relatively flat throughout the period, as would be expected for a fresh agricultural product.[140] Despite a decline in gross profit each year from 2000 to 2002, the industry's gross profit and gross profit margin increased between the interim periods.[141] These indicators thus showed improvement in interim 2003 as compared to interim 2002, notwithstanding *** continued increases in the volume and value of subject imports in between those periods.[142] To the extent there were declines in economic indicators during the period examined, these declines were not significant, and coupled with the attenuated nature of competition and absence of significant price effects, the subject imports have not had an adverse impact on the domestic industry.

There is no evidence of an adverse impact on the domestic industry's growth or ability to raise capital.[143] Empire has been purchased by new owners who reportedly have stated that they intend to invest substantial new capital into the business.[144] In addition, two new producers have announced plans to enter this industry.[145]

In light of the attenuated competition between subject imports and the domestic like product, the predominant presence of the U.S. industry in the market, our finding that subject imports have not

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[138] CR and PR at Table VI-1. Commercial sales increased from $*** in 2000 to $*** in 2001, and then declined to $*** in 2002. Between interim periods, sales improved from $*** for interim 2002 to $*** for interim 2003. *Id.* Total net sales, which include internally-consumed shipments, followed a similar trend. *Id.* U.S. shipments also followed the same pattern, increasing from *** pounds in 2000 to *** pounds in 2001, declining to *** pounds in 2002, and then improving from *** pounds in interim 2002 to *** pounds in interim 2002. CR and PR at Table III-2.

[139] CR and PR at Table III-2. Productivity rose from *** pounds produced per hour in 2000 to *** pounds per hour in 2001, and then dropped to *** pounds per hour in 2002, finishing the three-year period *** above the 2000 level. In interim 2003, productivity was *** pounds per hour, comparable to the *** pounds per hour in interim 2002. *Id.* In 2000, the domestic industry employed *** production and related workers ("PRWs"), who were paid total wages of $*** for *** hours worked; in 2001, *** PRWs were paid total wages of $*** for *** hours worked; and in 2002, *** PRWs were paid total wages of $*** for *** hours worked. *Id.* There was no change between the interim periods in the number of PRWs employed or the number of hours worked, although the wages paid dropped by *** amount (*** percent). *Id.* and CR and PR at Table C-1.

[140] CR and PR at Table III-2. End-of-the-year inventories held by U.S. producers were *** pounds and *** percent of total shipments in 2000, *** pounds and *** percent of total shipments in 2001, and *** pounds and *** percent of total shipments in 2002. *Id.* At the end of September, 2003, U.S. producers held kosher chicken inventories of *** as compared to *** pounds held at the end of September 2002. *Id.*

[141] CR and PR at Table VI-1. Gross profit declined from $*** in 2000 to $*** in 2001 and to $*** in 2002. During interim 2003, gross profit was *** percent higher, at $*** than it was during interim 2002, at $*** . Gross profit margins declined from *** percent in 2000 to *** percent in 2001, and to *** percent in 2002, but rose from *** percent in interim 2002 to *** percent in interim 2003. *Id.*

[142] CR and PR at Table IV-2.

[143] As noted in the discussion of conditions of competition, the closing of the King David facility was not related to the subject imports. CR at III-1-2, PR at III-2.

[144] CR at VI-1, PR at VI-1.

[145] CR at III-2-3, VI-2; PR at III- 2, VI-1-2. The Kiryas Joel facility reportedly will open once water treatment equipment is installed. It will process 1.5 million chickens annually under CRC certification for the Satmar sect in Monroe, N.Y. *Id.* G&G Kosher Foods of Brooklyn, N.Y., plans to open a CRC-certified processing facility in Pennsylvania, which will also serve the Satmar community. *Id.*

significantly undersold or suppressed or depressed domestic prices, and the lack of correlation between subject import trends and any declines in the condition of the industry, we find no reasonable indication that subject imports are having a material adverse impact on the domestic industry. Accordingly, we find that there is no reasonable indication that the domestic industry is materially injured by reason of the allegedly LTFV imports of kosher chicken from Canada.

VI. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. General Legal Standards

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[146] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.[147] In making our determination, we consider all statutory threat factors that are relevant to this investigation.[148] Based on our evaluation of the record compiled in this preliminary phase of the investigation, we have determined that there is no reasonable indication that the domestic industry producing kosher chicken is threatened with material injury by reason of subject imports from Canada.

B. Analysis of Statutory Threat Factors

As an initial matter, we reiterate that, although the domestic industry was not in a robust condition, it showed signs of recovery in the first nine months of 2003, prior to the filing of the petition.

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[146] 19 U.S.C. § 1677(7)(F)(ii).

[147] 19 U.S.C. § 1677(7)(F)(ii).

[148] 19 U.S.C. § 1677(7)(F)(i). These factors include: any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country; a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports; whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on the domestic prices and are likely to increase demand for further imports; inventories of the subject merchandise; the potential for product shifting; for raw agricultural products or products processed from raw agricultural products, the likelihood of increased imports by reason of product shifting; and the actual and potential negative effects on the existing development and production efforts of the domestic industry. 19 U.S.C. § 1677(7)(F)(i). Statutory threat factor (I) is inapplicable, as no countervailable subsidies are involved.

We further note that the domestic industry predominates in the market, at all times during the period examined enjoying a market share of more than 90 percent.

We find that the increase in the volume and market share of the subject imports over the period examined does not indicate a likelihood of substantially increased imports of subject merchandise in the imminent future. While the volume of subject imports rose over the period examined, the imports have consistently occupied well below 10 percent of the kosher chicken market, and the U.S. producers have continued to dominate the market. During the period examined, subject import volumes did not adversely affect the domestic industry, given the quality-based and certification-based limitations on the extent of competition between the domestic like product and subject imports, and there is no evidence that conditions of competition will change in such a way that there would be any increases in the imminent future that would have a significant adverse impact on the domestic industry.[149]

Moreover, Canadian producers' exports of kosher chicken are restricted by provincial export quotas, which are allocated to all chicken producers in the region (kosher and non-kosher).[150] Exports of chicken from Ontario and Quebec are limited to eight percent of each region's past production. The maximum quota allocations for Chai and Marvid for the near future would maintain their exports to the United States within or below the current levels of their exports.[151]

We also find that there is no indication that unused production capacity or any imminent increases in production capacity in Canada will lead to substantially increased imports in the imminent future. The record indicates that the Canadian producers are operating at *** capacity utilization rates,[152] and their home-market shipments have remained steady, with an overall *** increase during the period examined.[153] As Canadian producers do not export kosher chicken to third country markets, there is no possibility that Canadian exports to other countries would be diverted to the United States due to dumping findings or antidumping remedies in other markets.[154] Thus, we do not find that unused foreign producer capacity will result in substantially increased imports to the U.S. market.

*** subject imports of kosher chicken are of the fresh product, therefore obviating the need for inventories.[155] Not surprisingly, throughout the period examined, Canadian processors' inventories, both

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[149] In fact, the likely changes suggested by the evidence are likely to increase U.S. producers' market share rather than the other way around. That is, two new firms have announced their intentions to begin production in the United States, and they will compete for sales to some of the same ultra-orthodox communities to which the Canadian producers sell. CR at III-2-3, VII-4, PR at III-2, VII-2; Conference Tr. at 99-100. Their entry into the market is therefore likely to reduce the volume of Canadian product sold in the U.S. market as the Canadian product will be forced to share further the sales targeted towards these particular communities.

[150] Memorandum INV-BB-012 (Jan. 13, 2004).

[151] Memorandum INV-BB-012. For example, the maximum quota allocation for Chai for February-March 2004 is just over *** pounds and for April-May 2004 just over *** pounds. For Marvid, the maximum quota allocation is *** pounds for February-March and *** pounds for April-May.

[152] CR and PR at Table VII-2. Canadian producers' capacity utilization rates increased from *** percent in 2000 to *** percent in 2001, and dropped *** to *** percent in 2003.

[153] CR and PR at Table VII-2. Home-market shipments rose from *** pounds in 2000 to *** pounds in 2001, and then *** dropped to *** pounds in 2003. *Id.* Such shipments were *** pounds in interim 2003 as compared to *** pounds in interim 2002. *Id.*

[154] CR at VII-2, n.5, PR at VII-2, n.5.

[155] CR and PR at Table I-4, CR at VII-5, PR at VII-3.

absolutely and as a ratio to total shipments, were ***, due to the perishable nature of kosher chicken.[156] Accordingly, we find that inventory levels do not indicate a likelihood of increased imports in the imminent future.

With respect to the threat criteria relating to product shifting and raw and processed agricultural products, we find no potential for product shifting, as the Canadian processors' facilities are almost exclusively devoted to the production of kosher chicken, with the exception of *** amounts of kosher turkey and kosher duck production.

We also find it unlikely that subject imports will enter the U.S. market at prices likely to suppress or depress domestic prices to any significant degree or to increase demand for subject imports. As discussed above, the record evidence indicates that subject import prices have had no significant adverse effects on domestic prices. We find nothing in the record that indicates that conditions of competition in the industry will change so substantially in the imminent future that domestic prices will likely be adversely affected to a significant degree by subject import prices.

We also find that subject imports are not likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts. Rather, there is evidence of new capital investment by Empire and by the two additional domestic processors that are poised to enter the industry.[157]

CONCLUSION

For the reasons stated above, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of ready-to-cook kosher chicken from Canada allegedly sold in the United States at less than fair value.

[156] CR and PR at Table VII-2, CR at II-9, PR at II-6.

[157] CR at VI-1, PR at VI-1.

DISSENTING VIEWS OF COMMISSIONER MARCIA E. MILLER

Based on the record in this investigation, I find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of kosher chicken from Canada that are allegedly sold in the United States at less than fair value (LTFV).[1] I join the majority's views on the domestic like product, domestic industry, and conditions of competition, except where noted. My dissenting views on material injury follow.

As an initial matter, questions have arisen in the course of this investigation which, in my opinion, warrant further examination. In particular, the record indicates that some importers of the subject product are distributors who are also customers of the domestic industry. This raises the question of whether the pricing data gathered by the Commission adequately reflects competition between subject imports and the domestic product at the same level of trade. While the resolution of this may not ultimately change the conclusion of whether the domestic industry is materially injured or threatened with material injury, it merits additional investigation.

Reasonable Indication of Material Injury by Reason of Allegedly LTFV Imports From Canada

In the preliminary phase of an antidumping duty investigation, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[2] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[3] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[4] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry

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[1] The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports. 19 U.S.C. § 1673b(a); *see also* American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chem. Corp. v. United States, 20 CIT 353, 354-55 (1996). In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation." American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); *see also* Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[2] 19 U.S.C. 1673b(a).

[3] 19 U.S.C. § 1677(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor ...[a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B); *see also* Angus Chem. Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[4] 19 U.S.C. § 1677(7)(A).

in the United States.[5] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[6]

Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[7]

In this investigation, the Commission gathered data for the period beginning January 2000 through September 2003. Between 2000 and 2002, imports of kosher chicken from Canada ***, consistently rising from year to year both in volume and value.[8] These increases continued in the January-September 2003 interim period.[9] Over the same period, United States consumption of kosher chicken increased ***, rising in 2001, before dropping off somewhat in 2002.[10] Because of the increased volumes of subject imports, subject imports' market share increased, *** during the 2000-2002 period. Accordingly, the domestic industry's share of apparent U.S. consumption steadily declined between 2000 and 2002, with a further decline noted over the 2002-2003 interim period.[11] In the year of highest demand, 2001, the domestic industry suffered its largest loss of market share. I note that there were no nonsubject imports present in the United States during the period examined.

Based on this record, I find that the volume of subject imports, both in absolute terms and relative to apparent consumption in the United States, is significant.

Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether --

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[5] 19 U.S.C. § 1677(7)(C)(iii).

[6] 19 U.S.C. § 1677(7)(C)(iii).

[7] 19 U.S.C. § 1677(7)(C)(i).

[8] Subject imports by quantity were *** pounds in 2000, *** pounds in 2001, and *** pounds in 2002. The value of subject imports was *** in 2001, rising to *** in 2001 and rising further still to *** in 2002. CR/PR at Table IV-2.

[9] In the January-September 2003 interim period, subject imports increased to *** pounds and ***. CR/PR at Table IV-2.

[10] U.S. consumption was *** pounds in 2000, *** pounds in 2001 and *** pounds in 2002, for an overall increase of *** percent. CR/PR at Table C-1. A larger percentage increase is observed over the 2002-2003 interim period. Comparing the 2002 and 2003 interim periods, U.S. consumption increased *** percent. CR/PR at Table IV-2.

[11] Subject imports accounted for *** percent of the market in 2000, *** percent in 2001 and *** percent in 2002. CR/PR at Table IV-2. The volume of subject imports increased faster than the increase in U.S. consumption. Subject imports increased *** percent by quantity between 2000 and 2002, whereas consumption increased a mere *** percent by quantity. The domestic industry's market share was *** percent in 2000, dropping to *** percent in 2001 and then to *** percent in 2002. In the interim periods, that market share decreased from *** percent in 2002 to *** percent in 2003. CR/PR at Table C-1.

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States; and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[12]

The record in this preliminary investigation suggests that there is a moderate degree of substitutability between subject imports and domestic kosher chicken. Although the domestic industry reports that domestic kosher chicken and Canadian kosher chicken are always interchangeable, respondents report differences in the cleanliness of the product, color, and feather count, for example.[13]

Information obtained in the preliminary phase of this investigation with respect to pricing is inconsistent. With respect to price comparisons, the pricing data indicate that subject imports generally oversold the domestic product.[14] According to the domestic industry, however, subject import prices are lower than domestic prices.[15] A question arises as to whether domestic industry and subject import prices gathered in this investigation and reflected in the pricing data are at a comparable level of trade. The record indicates that there are importers/distributors who are also customers of the domestic industry,[16] and that domestic production is sold mainly to distributors.[17] To the extent that the subject import pricing data reflect a distributor's price to a retailer, it may not be comparable to a domestic producer's price to the same distributor.[18]

With respect to price depression, domestic prices declined over the period examined, and subject import prices followed a similar trend.[19] The Commission collected pricing data for four kosher chicken products.[20] For each of the four product categories, prices were lower at the end of the period examined than at the beginning. Specifically, prices for Product 1 declined by *** percent for the domestically produced product, prices for Product 2 declined by *** percent, prices for Product 3 declined by ***

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[12] 19 U.S.C. § 1677(7)(C)(ii).

[13] CR at II-12-13. PR at II-8-9.

[14] CR/PR at Tables V-1 –V-4.

[15] *See* Affidavit of *** attached to Petitioner's Response to Supplemental Questionnaire; *see also,* Petition at Exhibit 20.

[16] *See* Empire's list of its top ten customers and compare it to list of U.S. importers; list of U.S. importers supplying usable pricing information to the Commission; Petition at Exhibit 20; and Affidavit of *** attached to Petitioner's Response to Supplemental Questionnaire. *See*, for example, *** appears both as a customer of *** and as a U.S. importer. CR/PR at Appendix E-2; CR/PR at Table IV-1; CR at V-5, fn. 5, PR at V-3, fn.5; and Petition at Exhibit 20. Additional information in the processors' and importers' questionnaire responses further confirms that the domestic industry does indeed sell to importers of the subject product.

[17] CR at I-11, PR at I-7-8.

[18] *** alleges that U.S. importers do not pass on the alleged dumped Canadian prices, but instead mark-up the price, and that this new price becomes the retail selling price. CR at IV-4. PR at IV-3-4.

[19] CR/PR at Tables V-1 –V-4; and *see,* Petition at Exhibit 18. An examination of average unit values ("AUVs") suggests increasing prices; however, AUVs in this investigation are of limited value given the product mix. CR/PR at Table I-3.

[20] CR at V-5. PR at V-3.

percent, and prices for Product 4 declined by *** percent over the period.[21] The Canadian product experienced even steeper declines for three out of the four products.[22]

The domestic industry reported ten lost sales allegations totaling *** and involving *** pounds of kosher chicken, and *** lost revenue allegations.[23] At this preliminary stage, only two customers responded to the lost sales allegations, and they both denied them.[24]

In view of the mixed pricing information currently available and the additional issues outlined above which merit further investigation, I reach no conclusion on price effects.

Impact of the Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, shall evaluate all relevant economic factors which have a bearing on the state of the industry.[25] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[26]

Several financial and performance indicators of the domestic industry declined over the period examined. Although demand increased *** overall, U.S. producers continually lost market share to the subject imports throughout the period examined.[27] U.S. production initially increased in 2001 when consumption peaked, but then fell to a level below that at the start of the period examined.[28] U.S. shipments followed a similar trend.[29] Capacity utilization remained low throughout the period examined

[21] CR at V-12-13. PR at V-5-6.

[22] CR at V-12-13. PR at V-5-6.

[23] CR at V-14. PR at V-6. *See* *** processors' questionnaire response at Section IV-D and IV-E. In addition, *** indicated generally several lost sales and lost revenue allegations. However, these allegations were not alleged in sufficient detail to allow for verification. *See* *** processors' questionnaire response at Section IV-D and IV-E.

[24] The remaining customers did not respond to the allegations. CR/PR at Table V-5.

[25] 19 U.S.C. § 1677(7)(C)(iii).

[26] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce reported that the petition's estimated dumping margins for imports of kosher chicken range from 33.33 percent to 39.54 percent. Notice of Initiation, 68 Fed. Reg. 25486 (Dec. 31, 2003).

[27] The domestic industry's market share was *** percent in 2000, dropping to *** percent in 2001 and then to *** percent in 2002. In the interim periods, we see that market share decreased from *** percent in 2002 to *** percent in 2003. CR/PR at Table C-1.

[28] U.S. production quantity was *** pounds in 2000, which increased in 2001 to *** pounds before falling off to *** pounds in 2003. CR/PR at Table C-1.

[29] U.S. shipments were *** pounds in 2000, which increased in 2001 to *** pounds, before declining in 2003 to *** pounds. CR/PR at Table III-2.

with a further drop in 2002, when subject imports reached their highest level.[30] Domestic industry inventory quantity declined *** over the period examined.[31]

Additionally, the domestic industry's financial condition deteriorated in the period examined. It experienced *** in 2001 and 2002, with improvement in the interim 2003 period.[32] However, the improvement in the interim 2003 period occurred amidst reductions in hourly wages and layoffs.[33] Capital expenditures declined between 2000 and 2002. Research and development expenses increased.[34]

In view of the above and the fact that the declining performance of the industry occurred as the rising volume of subject imports increased significantly, I find a reasonable indication that the subject imports have had a significant adverse impact on the domestic industry.

Conclusion

For the foregoing reasons, I determine that there is a reasonable indication that the domestic industry is materially injured by reason of imports of kosher chicken from Canada that are allegedly sold in the United States at less than fair value.

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[30] Capacity utilization was 56.7 percent in 2000, 56.9 percent in 2001 and 54.6 percent in 2002. CR/PR at Table III-2.

[31] Inventories fell just *** percent between 2000-2002. Inventories were *** pounds in 2000, *** pounds in 2001, and *** pounds in 2003. CR/PR at Table C-1 and Table III-2.

[32] Operating income *** from *** in 2000 to *** in 2001, then to *** in 2002. Operating margins *** from *** percent in 2000 to *** percent in 2001, then to *** percent in 2002. Over the interim periods, we see *** in both the operating income and operating margins. Operating income *** from *** in interim 2002 to *** in interim 2003. The operating margin *** from *** percent in 2002 to *** percent in interim 2003. CR/PR at Table C-1.

[33] There was a continual reduction of workers throughout the period examined. There were *** production workers in 2000, *** in 2001 and *** in 2002. Hourly wages were reduced from *** in 2000, to *** in 2001 to *** in 2001. CR/PR at Table III-2.

[34] CR/PR at Table VI-6.

INTRODUCTION

BACKGROUND

This investigation results from a petition filed by Empire Kosher Poultry, Inc. (Empire), Mifflintown, PA, on December 1, 2003, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of ready-to-cook Kosher chicken and parts thereof (kosher chicken)[1] from Canada. Information relating to the background of the investigation is provided below.[2]

Date	*Action*
December 1, 2003 ..	Petition filed with Commerce and the Commission;[3] institution of Commission investigation (68 FR 69088, December 11, 2003)
December 22, 2003 .	Commission's conference[4]
December 31, 2003 .	Commerce's notice of initiation (68 FR 75486, December 31, 2003)
January 14, 2004 ...	Date of the Commission's vote
January 15, 2004 ...	Commission determination transmitted to Commerce
January 23, 2004 ...	Commission views sent to Commerce

SUMMARY DATA

A summary of data collected in the investigation is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of three processors that accounted for *** percent of reported U.S. production of kosher chicken during 2002.[5] The report also contains limited

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[1] For purposes of this investigation, the subject product is ready-to-cook chicken from Canada, whether fresh, chilled, or frozen, and whether whole or cut up in pieces, that has been certified as Kosher or Glatt Kosher. Symbols indicating kosher certification include, but are not limited to, COR, CRC, MK, and OU. Ready-to-cook Kosher and Glatt Kosher chicken is also identified by the number of the agricultural plant in Canada from which the product originated. Excluded from the scope of this investigation are Kosher or Glatt Kosher chicken wings (if unattached to any other chicken part) and offal such as necks, gizzards, livers, and hearts. Cooked chicken or chicken parts and ready-to-cook non-kosher whole chicken or chicken parts are outside the scope of this investigation.

Kosher chicken is imported under the following provisions of the *Harmonized Tariff Schedule of the United States* (*HTS*): 0207.11.0020, 0207.11.0040, 0207.12.0020, 0207.12.0040, 0207.1300, and 0207.14.0040. The tariff rate is free (under the North American Free Trade Agreement) for eligible goods of Canada under those provisions; other products of Canada are dutiable at the general tariff rates. For a more detailed description of the merchandise subject to this investigation, including the like product produced in the United States, *see* the subsection of Part I entitled "The Subject Product."

[2] *Federal Register* notices cited in the tabulation are presented in app. A.

[3] The estimated LTFV margins in the petition, which are based on a comparison between export price and normal value, range from 33.33 percent to 39.54 percent. 68 FR 75486, December 31, 2003.

[4] A list of witnesses appearing at the conference is presented in app. B.

[5] A fourth processor, which accounted for the remaining *** percent of U.S. subject production in 2002, only provided limited data to the Commission. Further, the share calculations are not based on, and do not include, production by a fifth processor that was operating for a few months in 2002. Unless otherwise noted, all volume

(continued...)

data reported by U.S. growers (farmers). U.S. import figures are based on exports to the United States of the subject product as reported by the two Canadian processors; there are no known nonsubject imports.

MAJOR FIRMS INVOLVED IN THE U.S. KOSHER CHICKEN MARKET

There are four U.S. processors of kosher chicken: Agriprocessors, Inc. (AgriProcessors); David Elliot Poultry Farm, Inc. (David Elliot); Empire; and Vineland Kosher Poultry (Vineland). Empire is the petitioner;[6] the remaining U.S. processors are not parties to the investigation but all submitted letters in support of the petition. In addition, another processor, King David Kosher, Inc. (King David), briefly was in business during 2002. Also, somewhat over 100 farmers raised the chickens that were transported to the processors for slaughter.

U.S. imports during the period for which data were collected (January 2000 through September 2003) were reported only from Canada, the subject country. Kosher chicken is processed in Canada by two firms, Chai Poultry Inc. (Chai) and Marvid Poultry Canada (Marvid). Both firms export kosher chicken to the United States and are parties to the investigation.[7] Approximately *** U.S. firms import kosher chicken from Canada. Known U.S. importers include: Alle Processing Corp. (Alle); American World Food, Inc./dba Shalom & Sons (Shalom & Sons); Atlanta Foods International (Atlanta Foods); Eastside Kosher Deli (Eastside); Kosher Brands, Inc. (Kosher Brands); Kosher Club (Kosher Club); Munchik Foods (Munchik); S' Better Farms & RPF, Inc. (S' Better Farms & Royal Palate); Ventura Kosher Meat (Ventura); West Side Foods, Inc. (West Side); and Woodridge Meat Inc./dba Kessler Bros. (Kessler).[8] None of the U.S. importers is a party to the investigation; no U.S. processors import kosher chicken from Canada.

THE SUBJECT PRODUCT

Description

The imported product subject to this investigation is, as noted earlier, kosher chicken whether fresh, chilled, or frozen,[9] and whether whole or cut up in pieces, that is labeled or certified as Kosher or Glatt Kosher. Kosher food is that which fulfills the requirements of the Jewish dietary laws, or kashrut, that are derived from the Jewish Torah (i.e., the laws of G-d as revealed to Moses and recorded in the Pentateuch or the first five books of the Old Testament or Hebrew scriptures). Kashrut specifies which

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[5] (...continued)
figures in this report refer to pounds of dressed product weight and exclude any offal.

[6] Empire is not represented by a law firm or economic consultant in this investigation.

[7] Chai and Marvid are represented by the law firm Kalik Lewin.

[8] Chai also supplied a list of *** additional firms through which it exported during the period examined in the investigation.

[9] Fresh chicken is recently produced product that is refrigerated (usually packed in ice) but not made hard, typically 32-36 degrees internal temperature. The chilled product is also recently produced but made colder so that the outer edge of the product is crusted (hardened), typically 25-31 degrees internal temperature. The frozen product is made so cold as to become a solid, typically 0-24 degrees Fahrenheit. Frozen product may or may not be recently produced. Fax, dated November 28, 2003, from Empire (Harry Geedey, Vice President of Sales).

foods can and cannot be consumed and how they must be prepared.[10] Food that is not kosher is labeled "treif."[11] As will be explained in further detail in the section of this report entitled "The Production Process," chicken is rendered kosher when it is slaughtered in a manner that meets the strictures of the Torah as set forth in a series of rulings over the last 3,000 years by rabbis within the Jewish community. Chicken that is not slaughtered according to kashrut or is improperly slaughtered is designated as non-kosher.[12] In 2002, *** pounds of kosher chicken was produced in the United States compared to 32.8 billion pounds of non-kosher chicken.[13]

The petition specifies that the subject product includes also that chicken certified as "Glatt Kosher." "Glatt" literally means "smooth" in Yiddish, indicating that the meat comes from an animal whose lungs have been found to be free of all adhesions or, in some Jewish communities, with no more than two easily removed adhesions. Included as an exhibit (exhibit 1) to the petition is an article ("What's the Truth About . . . Glatt Kosher") in which it is stated that using the term "glatt" to refer to chicken is a "misuse of the term;" reportedly the lungs of U.S.-grown fowl (including chicken) usually do not contain adhesions.[14] The term "Glatt Kosher" is often used generically to imply that a product is "kosher without question or alternatively that it meets a higher standard."[15] All of the kosher chicken processed by both U.S. and Canadian processors is considered to be Glatt Kosher.[16]

Following kashrut and determining whether a food is kosher can be complex. The common practice of kosher certification, however, greatly simplifies the task of "keeping" kosher for observant Jews. Basically, certification is the endorsement that a product has been manufactured according to the Jewish Dietary Laws and under rabbinical supervision. There are a large number of certifying kashrut organizations or councils that follow varying standards and policies; in addition, individual rabbis can also provide their own certifications. Most large kashrut organizations have registered symbols or logos that appear on the package to indicate that the product is kosher. With the exception of the "K" certification, all other kosher certifications are trademarked and cannot be used without the permission of the certifying organization. The USDA also specifies that the term "kosher" may only to be used on the

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[10] Various explanations have been given for the kashrut dietary restrictions. The establishment of kashrut within the Jewish community historically has been viewed by some as a way of implementing early health and sanitary practices. This concept has, however, largely been discarded and some Jewish thinkers today emphasize the disciplinary aspects of "keeping kosher" while others focus on the sense of Jewish identity and community that comes from adherence to kashrut. For many observant Jews, however, following kashrut is simply a way of showing obedience to G-d and maintaining spiritual purity. "Thinking Kosher - What Does Kosher Mean? What is a Kosher Symbol?" at *http://www.ou.org* (retrieved December 12, 2003) and "Kashrut: Jewish Dietary Laws" at *http://www.barmitzvahs.org* (retrieved December 12, 2003).

[11] The technical definition of *treif* is derived from a verse in the Biblical chapter of Exodus ("Do not eat meat from an animal torn [*treifa*] in the field").

[12] 'Thinking Kosher - What Does Kosher Mean? What is a Kosher Symbol?" at *http://www.ou.org* (retrieved December 12, 2003).

[13] Figure for the kosher chicken slaughter is compiled from the questionnaire responses of the four currently operating U.S. processors and the figure for non-kosher chicken is from *Poultry Slaughter 2002 Annual Summary*, Agricultural Statistics Board, NASS, U.S. Department of Agriculture (USDA), March 2003.

[14] The article further states that "there are those who feel that nowadays fowl lung problems are also becoming more prevalent and thus require a visual and tactile inspection ..." (cite to Rav Moshe Sternbuch, *Tshuvot v'Hanhagot* 2:369).

[15] *See www.ou.org/kosher/primer.html*, retrieved December 12, 2003.

[16] Transcript of the Commission's December 22, 2003 conference (conference transcript), pp. 25-27.

labels of meat and poultry products prepared under rabbinical supervision;[17] further it is illegal in some states to falsely advertise that a product is kosher.

The processor and certifying organization agree to supervision in a contract that specifies the amount of in-plant supervision. Different certification agencies follow varying standards and policies and maintain various price schedules. Reportedly, "one very important factor in determining the fee is the out of pocket expenses that will be incurred during the inspection program."[18] The largest kashrut supervising organization in the United States is the Union of Orthodox Jewish Congregations (OU), a non-profit communal organization. Its symbol is the letter "u" inside the letter "o".[19]

Uses

Kosher chicken is typically purchased for consumption by observant Jews and kosher-keeping institutions (caterers, hospitals, restaurants, schools, and synagogues) that follow kashrut and also by Moslems, Seventh-day Adventists, and many other health-conscious consumers whose perception is that kosher food is of higher quality.[20] In addition, keeping kosher is reported to be of increasing interest to some of the more liberal Jewish communities in the Reform movement that have traditionally not followed the kashrut dietary laws.[21] Some growth in kosher sales to non-observant Jews is also anticipated as kosher products are increasingly offered in supermarkets.[22] Petitioners testified, however, at the Commission's conference that most sales are to observant Jews (and related institutions).[23] Empire indicates that an estimated one million of the six million Jews in the United States keep kosher and that observant Jews account for only 0.5 percent of the U.S. population.[24]

The subject product also includes kosher chicken that is used captively by the U.S. processors in the production of such downstream products as processed (fried) chicken, chicken bologna, chicken franks, and chicken nuggets. For the downstream product to be certified kosher, the meat (chicken) ingredient must be kosher.[25]

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[17] "Meat and Poultry Labeling Terms," at *www.fsis.udsa.gov*, retrieved December 9, 2003.

[18] *See www.ou.org/kosher/kosherqa/supervis.htm*, retrieved December 12, 2003.

[19] "OK Kosher Certification - Kosher Supervision" at *http://www.okkosher.com* (retrieved December 12, 2003); "Kosher Symbols - Kosher Supervision Organizations" at *http://www.mazornet.com/jewishcl/Kosher/kosherorgs.htm* (retrieved December 12, 2003); and "Recommended Symbols" and "OU Kosher Q & A" at *http://www.ou.org* (retrieved December 12, 2003). Also *see www.kosherquest.org/html/Reliable_Kosher_Symbols.htm*, retrieved December 12, 2003.

[20] "The Kosher Advantage" at *http://www.ou.org* (retrieved December 12, 2003).

[21] "Reform Judaism's New Perspective on Keeping Kosher" at *http//www.beth-elsa.org* (retrieved December 12, 2003).

[22] "The Repackaging of Kosher Foods."

[23] Conference transcript, pp. 33-34. But see the producer questionnaire response of *** that cites marketing surveys which reportedly show that approximately 25 percent of the consumers of Kosher poultry are not Jewish.

[24] Petition, p. 7.

[25] *See www.kosherquest.org/html/Reliable_Kosher_Symbols.htm*, retrieved December 12, 2003.

The Production Process

Farming and the Farmers

The chicks that will eventually be slaughtered to produce kosher chicken typically are either hatched at the processor's on-site hatchery or purchased from a breeder and then transferred to local farmers under contract with the processor for the grow-out. The time required to adjust the production of live birds ranges from four months to a year.[26] Empire operates both its own hatchery and feed mill from which it also delivers custom-prepared feed for the chickens to the farmers. Agri and Vineland also contract with farmers (but do not own hatcheries) and David Elliott purchases chickens from a broker.[27] The farmers own the land, buildings, and provide the necessary labor.[28] Empire testified at the Commission's conference that its farmers are under contract to supply all of their chickens to Empire for kosher processing; almost none are shipped to non-kosher processing plants.[29] There is minimal demand on the open market for live chickens in the United States.[30]

Empire reported that the distinctions between growing birds for kosher and non-kosher slaughtering are minor, with minimal differences in grow-out costs.[31] There are, however, some differences in the growing processes. The farmers provide chickens destined for the kosher slaughter plants with natural sunlight and additional space for roaming. The feed for the chickens is not only free of antibiotics and hormones but is specially formulated to create a stronger, healthier skin on the chicken that is more easily removed with the cold water that must be used in the kosher processing plants.[32] Further, the chickens are free-roaming, which means that it is necessary for the farmers to closely watch what the birds ingest. According to Empire's web site, "any injury or damage to the bird's intestinal tract and vital organs during this stage automatically renders it non-kosher, and unfit for {kosher} processing . . . Consequently, growing chicks cannot be exposed to litter, garbage, metals, or other substances found on ground outside the housing. Instead, all housing is completely sanitized between each flock, with birds free to roam inside the airy, spacious climate controlled housing."[33]

Processing and the Processors

At approximately 31 to 45 days of age,[34] the chickens are transferred to the processors for the kosher slaughtering process. Ritual slaughter (or Shechita) consists of a quick, deep stroke through the

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[26] Conference transcript, p. 10.

[27] Conference transcript, pp. 22-23. The Canadian processors Chai and Marvid ***. Staff conversation with counsel for respondents, January 3, 2004.

[28] Conference transcript, p. 22.

[29] Conference transcript, p. 23.

[30] Conference transcript, p. 15.

[31] Conference transcript, p. 44. Empire's attachment to its postconference brief indicates that the live cost for a chicken fit for kosher processing is $*** per pound while that for non-kosher processing is $*** per pound.

[32] Wise Poultry at *www.wisekosher.com* (retrieved December 1, 2003) and "Kosher Chickens: From Coop to Soup" at *http://www.star_k.org* (retrieved December 18, 2003).

[33] "What an Empire chicken eats" at *http://www.empirekosher.com* (retrieved December 2, 2003).

[34] Age is the primary determinant of size, with whole chickens supplied to consumers in average size ranges of 2.25 pounds, 2.5 pounds, 3 pounds, 3.5 pounds, 4 pounds, and 4.5 pounds (eviscerated). Fax, dated January 7, 2003, from Empire (Harry Geedey).

trachea (wind pipe) and esophagus (food pipe) of the bird with a specially designed blade that must be free of nicks or cuts. The act is designed to be as painless and humane as possible and to permit the complete draining of blood, which is also necessary for the meat to be declared kosher.[35] The slaughter is performed by pious Jews (or Shochets) that are well-trained in the kashrut slaughtering protocols; each chicken is held by hand during the slaughter.[36]

The next steps are, by contrast, typically more automated, with the use of soak tanks, showers, and plucking machines through which the chickens are continuously moved on conveyor belts. No hot or heated water can be used or come into contact with the birds during the kosher slaughter process.[37] The birds are submersed in cold water or given cold water showers while traveling through numerous plucking machines that use rubber finger-like beaters to de-feather the chicken. A typical kosher picking line has eight to ten picking machines and line speeds of 55 to 60 birds per minute. Small kosher plants may have only three or four machines, and line speeds at these plants are extremely slow (20-25 birds per minute).[38] Once the feathers are removed, the chicken is beheaded and de-footed and then eviscerated. Following evisceration the chicken is soaked for 30 minutes in cool (not ice) water in a specially designated vessel. The entire bird is then completely covered with coarse salt. The salted chicken is left for an hour on an inclined or perforated surface to allow the blood to flow down freely. The chicken is next thoroughly soaked and washed to remove the remaining salt and blood.

Following the final wash, the whole chickens are typically separated by grade and hung on lines destined for either packing as a whole chicken or the cut-up operation. Whole birds are dropped from the line by size and then either bulk packed or vacuum packed for retail sale. Cut-up is done either by hand or machine with parts either packed in bulk or tray packs. A metal wing tag called a plumba is often clipped onto the meat; it shows the kosher symbol of the certifying agency and functions as a proof of supervision. Alternatively, the chicken is encased in shrink wrap that is labeled with the kosher logo.[39]

In a kosher chicken plant the entire process is supervised by trained religious inspectors. Even before the processing begins, the birds are examined for injuries or evidence of disease. Only healthy birds qualify to be slaughtered as kosher.[40] After the slaughter, the internal organs of each animal are inspected for any physiological abnormalities that would cause the bird to be labeled non-kosher or treif. Reportedly, inspections are for broken bones, holes, punctures and bruises. In addition, all the original organs should be present with no infections or tumors on the intestines. Finally, a religious inspector checks each package for defects and ensures that the kosher wing clips are properly attached.[41]

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[35] The Torah prohibits the consumption of blood. The first step in removing the blood from the animal occurs during the ritual slaughtering; the remaining blood "must be removed, either by broiling or soaking and salting. Liver may only be kasheed by the broiling method, because it has so much blood in it and such complex blood vessels." "Kashrut: Jewish Dietary Laws" at *www.barmitzvahs.org*, retrieved December 12, 2003.

[36] Petition, pp. 4-5.

[37] The use of cold water facilitates the removal of the blood; hot water cannot be used since it would cause the blood to congeal and remain in the veins of the bird. Conference transcript, p. 11. However, not using hot water makes it much more difficult to remove the feathers of the birds.

[38] Petition, p. 5.

[39] *See www.ou.org/kosher/primer.hmtl*, retrieved December, 12, 2003; petition, pp. 5-6; and fax, dated January 6, 2004, from Empire (Harry Geedey).

[40] "Aint No Way to Go: Killed with Kindness," attached as exhibit 8 to the petition.

[41] The birds are also inspected for disease or contamination by the Food and Inspection Service (FSIS) of the USDA. U.S. poultry production, including kosher, is subject to mandatory inspection by the FSIS under the Poultry Product Inspection Act, as amended, if such production enters interstate or foreign commerce.

The petitioner states that kosher poultry plants are markedly different from those that process non-kosher chicken. Instead of the ritual slaughter, a non-kosher production facility uses electrical stunners and killing machines to slaughter the birds. In a non-kosher facility, the chickens are immersed in hot, not cold water, because the former aids in releasing the feathers. De-feathering is, as a result, easier with de-feathering machines that process 160 to 180 birds per minute used. Non-kosher chickens are not soaked, salted, and rinsed after evisceration. Further, non-kosher chicken processors are inspected only by USDA inspectors.[42] The kosher slaughtering process at Empire requires about 3-½ hours while a non-kosher bird can be slaughtered in less than one hour.[43] Further, according to the OU, "{b}ecause kosher meat and poultry have many processing requirements . . . which must be performed by specially trained individuals, the labor costs associated with kosher meat and poultry are significantly greater. This accounts for the higher cost of kosher meat and poultry."[44] Additional cost distinctions between kosher and non-kosher chicken are created by rabbinical standards that exceed USDA regulations. For example, "if a chicken being processed in a non-kosher plant has a diseased part, it is simply cut out and the rest of the bird is processed. In kosher processing, the whole chicken is rejected as unfit for sale under a kosher label."[45] *See* the attachments to Empire's postconference brief for an itemized cost comparison listing the cost per pound of kosher chicken at $*** (*** percent of which is rabbinical labor) and non-kosher chicken at $*** per pound.

Distribution and Marketing

Empire states that most ready-to-cook kosher chicken is distributed to the consumer through a network of kosher distributors, retailers, restaurants, and institutions that are themselves certified or supervised by Jews trained in kashrut.[46] It further testified at the Commission's conference that kosher products (including the subject chicken) remain generally separate from non-kosher products at the first level of distribution, i.e., at the distributors. For example, its largest customer (West Side), a distributor, maintains separate kosher and non-kosher divisions with rabbinical supervision to ensure that there is no intermingling in the same facilities or on common trucks. However, kosher chicken is sold with non-kosher chicken in most supermarket chains in the United States where there may be no direct rabbinical oversight.[47] This is possible because the kosher chicken offered for sale in supermarkets is in the form of pre-packaged tray packs, each of which is labeled with the appropriate kosher logo(s) and/or contains wing tags. Tray packs can be handled and sold in a setting not subject to supervision and remain kosher unless the packaging is torn. Bulk-packed chicken, in contrast, is generally strapped or taped with the kosher certification(s) and is destined for kosher butcher shops (some of which are within supermarket settings) and other institutions under direct rabbinical supervision where the seals can be broken for further processing or food preparation.[48]

Table I-1 lists the channels of distribution into which kosher chicken was marketed in the United States in 2002. As shown, the majority of U.S. shipments of domestic and Canadian-processed product

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[42] Petition, p. 6.

[43] Conference transcript, p. 11.

[44] "How Do I Know It's Kosher?" at *www.ou.org* (December 12, 2003).

[45] *See http://www.empirekosher.com* (retrieved December 2, 2003).

[46] Petition, p. 7.

[47] Conference transcript, pp. 36-37.

[48] Conference transcript, pp. 37-38.

combined is shipped through distributors (*** percent), with the remainder sold directly to kosher-certified retailers (*** percent), kosher-certified institutions (*** percent), non-kosher retailers (*** percent), and captive processors (*** percent). *** kosher chicken is shipped to non-kosher institutions. Reporting U.S. importers (many of which are distributors) of the Canadian-produced chicken, in turn, sold *** to kosher-certified retailers and institutions.[49]

Table I-1
Kosher chicken: U.S. processors' U.S. shipments and Canadian processors' U.S. exports, by channels of distribution, 2002

* * * * * * *

The U.S. market may also be organized by the various kosher certification(s) under which the chicken is sold. The table below lists the processors supplying the U.S. market and their certifying agencies:

Table I-2
Kosher chicken: Processors supplying the U.S. market and their certifying agencies

Firm name	Location	Kosher certifications offered
AgriProcessors	United States	CHK, KAJ, and the OU
David Elliot	United States	CHK and the OU
Empire	United States	OU, Hadas (Belz),[1] Galil (Star-K); Empire's facilities are also used by Alle to process chicken under Nirbater Rav (Rabbi Teitelbaum) that is sold to the Satmar sect
Vineland	United States	CRC and OU
Chai	Canada	COR[2]
Marvid	Canada	CRC, OU, and the seal of the Rabbi Yisroel Gornish of the Khal Chizuk Hadas
Continued.		

[49] Review of the responses to the importers' questionnaires.

Continuation.

CHK is the symbol for the Crown Heights Kosher (i.e., the Beit Din Crown Heights);
COR is the symbol for the Canadian Jewish Congress of Toronto;
CRC is the symbol for the Central Rabbinical Congress;
KAJ is the symbol for the Kahal Adath Jeshurun;
MK is the symbol for the Montreal Vaad Hair;
OU is the symbol for the Union of Orthodox Jewish Congregations.

[1] The Belz community is the sixth largest Chasidic sect in the United States. Petitioner's postconference brief, p. 4 (citing attached article from *HasidicNews.com*).

[2] Also, a portion (*** percent) of the Chai product is also shipped with a Lubavitch plumba. Conference transcript, pp. 106-107, and fax, dated January 2, 2004 from counsel for respondents.

Source: Petition, exhibit 1; conference transcript, pp. 97-99; and petitioner's postconference brief, p. 4, except as noted above.

Respondents state that all of AgriProcessors' product bears the OU certification along with the more specialized certifications and that only Empire sells *** kosher chicken exclusively under OU certification.[50] As indicated above, Empire also slaughters kosher chicken for several Jewish communities and for one private label (Alle) in addition to its OU production. The Alle product is conducted as a separate slaughter from Empire's regular processing, with Alle providing the Shochets and rabbinical supervisors.[51] David Elliot produces to the CHK and the OU certifications; *** and its processed chicken meets the requirements of both certifications.[52] Vineland simultaneously manufactures to the CRC and OU certifications with the actual processing overseen by CRC rabbis with periodic inspection by the OU rabbis.[53]

Respondents testified at the Commission's conference that whereas many observant Jews accept "national" oversight of the slaughtering process for the chicken they consume (OU, for example), other communities (typically referred to as the Chasidic or ultra-orthodox communities)[54] retain more traditional approaches to kosher slaughtering. In these communities, the koshering of chicken (and other foods) is considered to be a communal responsibility requiring direct oversight by the community. The actual slaughter (i.e., the Shechita) of kosher chicken by a member of the community can, according to respondents' witnesses, in some cases be "a condition of purchase and consumption."[55]

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[50] Respondents' postconference brief, p. 11. ***. Staff conversation with ***.

[51] Conference transcript, pp. 27-28. In 2002, *** percent of Empire's production was OU-certified, *** percent was Star-K-certified, *** percent was Belz-certified, and *** percent was for Alle Packing. Petitioner's postconference brief, p. 7.

[52] Conference transcript, p. 61, and ***.

[53] Conference transcript, pp. 49-50.

[54] Ultra-orthodox Judaism is the most theologically conservative form of Judaism and can be distinguished as a way of life from modern orthodoxy and the more liberal forms of Judaism. Autonomous communities of ultra-orthodox Jews increasingly have been established since the 1950s in such neighborhoods as Boro Park, Williamsburg, and Crown Heights in Brooklyn (New York) and are reportedly expanding in population. "Ultra-Orthodox Judaism" at *http://en2.wikipedia.org* (retrieved December 12, 2003).

[55] Conference transcript, pp. 84-85.

As indicated earlier, about 1 million Jews "keep kosher" in the United States today. Of these, petitioner estimates that about 300,000 are part of the various Chasidic communities,[56] the largest of which are the Satmar and the Lubavitch sects.[57] It is the Satmar sect that requires CRC certification;[58] [59] CHK-certified chicken is processed for the Lubavitch community[60] as is the Chai chicken that is certified with the Lubavitch plumba.

Supermarkets can carry kosher chicken certified from different supervisions; there are no formal restrictions as to the type or number of kosher certifications sold within a supermarket setting.[61] The extent of any restrictions on kosher butcher shops and institutional sales carrying multiple certifications is, in contrast, not as clear. These channels are subject to the control of the local rabbinical councils that also certify them and that, at least in some areas, maintain control over the meats that are allowed to be sold (i.e., further cut and/or prepared) within them.[62] Reportedly, about 60 percent of total kosher chicken sales in the New York market (which accounts for about 60 percent, in turn, of the total U.S. kosher chicken market) are on the basis of OU certification while approximately 30 percent are sold to Chasidic certifications and the remaining 10 percent fall under various other certifications.[63]

Prices

Information with respect to the pricing of specific kosher chicken products from Canada and the United States is found in Part V of this report, *Pricing and Related Information*. In addition, Empire attached two exhibits to the petition (exhibits 4 and 5) depicting price differences between kosher and non-kosher chicken, with kosher chicken priced demonstrably higher.

COMPARABILITY OF CANADIAN-PROCESSED AND U.S.-PROCESSED KOSHER CHICKEN

Canadian respondents state that the "issue of competence" of the shochet is critical to understanding the U.S. kosher chicken market. They describe the kosher chicken market as highly segmented, with ultra-orthodox Jews, in particular, purchasing only chicken that meets the criteria of specific certifying agencies. Canadian respondents argue that the "vast majority" of kosher chicken from Canada is sold on the basis of specific non-OU certifications while the "overwhelming share" of Empire-produced chicken is sold under OU certification to "separate and distinct markets."[64] They further argue that "in view of the differences in customer and producer perception, the lack of interchangeability, differences in employees, and differences in channels of distribution, clear dividing lines exist for kosher

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[56] Conference transcript, p. 46.

[57] Conference transcript, pp. 84-85.

[58] Conference transcript, pp. 48-49.

[59] ***.

[60] Petitioner's postconference brief, p. 3.

[61] Conference transcript, pp. 135-137.

[62] Conference transcript, pp. 136-141.

[63] Conference transcript, pp. 94-95.

[64] Conference transcript, pp. 6-7.

chicken based upon rabbinic certification."[65] Petitioner testified at the Commission's conference that the domestic industry as a whole can process to each of the various sectarian certifications and that Alle and West Side (i.e., Marvid's U.S. distributors) sell kosher chicken processed by Marvid to institutions such as nursing homes that are under OU certification.[66] They also state that the specialized certifications (e.g., CHK and CRC) are typically acceptable to the non-sectarian observant Jew that purchases OU-certified chicken, and they argue that "when Canadian firms undercut pricing of Satmar-acceptable product, it injures both the U.S. firms specializing in Satmar product and those firms producing poultry with broader certifications."[67]

The petitioner reports that the processing facilities in Canada are similar to those in the United States,[68] with minimal differences in the equipment required to manufacture to various kosher certifications. While there are some differences in techniques (for example, pulling the feathers from the neck before cutting the bird and slaughtering speeds), the greatest distinctions, according to Empire, lie in the degree of confidence that consumers have in the various rabbis and/or their affiliation with particular Jewish communities.[69] Respondents point out that some of the processing differences, for example, the speed at which the chickens are slaughtered, are viewed by many in the observant Jewish community as inherent to the quality of the Shechita process. The sharpness of the blade used in the ritual slaughter is frequently checked by rabbis for any nick in the blade that would lead the chicken to be labeled as non-kosher and discarded. An issue for processors (and for the consumers that buy their product) whenever a nick is discovered is the kosher status of those chickens slaughtered prior to the imperfect knife being found.[70] [71]

Respondents also cite physical distinctions between Canadian and U.S.-processed birds, with Canadian kosher chicken containing fewer feathers and having less fat and being white rather than yellow in color.[72] Canadian processors testified at the Commission's conference that they are required to meet zero tolerance standards for feathers set by Agriculture Canada, whereas U.S. processors are exempt from the U.S. feather standards.[73] [74] In Canada, the feathers that remain after the chickens leave

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[65] Respondents' postconference brief, p. 10.

[66] Conference transcript, pp. 161-162. ***. The extent to which any overlap in customer lists could be identified is discussed in Part II and app. E of this report.

[67] Petitioner's postconference brief, p. 3.

[68] Petition, p. 4.

[69] Conference transcript, pp. 40-43 and 47.

[70] Conference transcript, pp. 90-92.

[71] A journal article states that, "{u}nder the leadership of Rabbi Spiegel, an energetic young rabbi, many improvements have already been made to bolster the kashrus of Empire amongst a broader sector of even the most Orthodox. Widely respected, Rabbi Spiegel has introduced a rigorous inspection of knives (chaluv) used in the slaughter of the birds. He himself and a team of rabbinic inspectors carefully plot the sharpness on their fingernails before it is deemed valid and inserted in a special cabinet for use. The door to the slaughter area opens constantly with shochtim (slaughterers) bidding for the inspection of their knives." "Empire Poultry Eyes Diversification and New Products as Key to Future Growth" in Kosher Today Newspaper Archives at *http://www.koshertoday.com* (retrieved December 9, 2003).

[72] Conference transcript, p. 7.

[73] Conference transcript, p. 134.

[74] The Canadian Food Inspection Agency (CFIA) is responsible for food safety, among other matters, in Canada and inspects chicken processing facilities. According to the Canadian Meat Inspection Regulations, there is no

(continued...)

the plucking machines are removed by hand-picking with sharp blades.[75] Empire acknowledges the difference and states that it is attempting to produce birds with fewer feathers (i.e., a "cleaner" bird).[76] According to ***, there are no differences between the chicken processed by *** and that processed by Marvid. Both firms use the same techniques to cut the wing tips of the birds and pin the feathers; ***'s chickens also contain relatively few feathers.[77]

Additional factors that distinguish sales of kosher chicken consist of packaging (tray packs compared to bulk packs), the cut of the meat (whole, cut up in pieces, bone-in breasts, boneless breasts, or legs and thighs), and whether the product is fresh, chilled, or frozen. The domestic industry testified at the Commission's conference that imports from Canada are concentrated in bulk-packed product sold primarily to kosher butcher shops and institutions.[78] (Respondents noted this point in their postconference brief and argue that since Chai is not OU certified its kosher chicken cannot be sold to businesses and institutions under OU supervision, which means it "can compete, if at all {with Empire}, only with tray pack products."[79] As indicated earlier, tray packs can be sold in settings not subject to rabbinical supervision.)

Tables I-3 and I-4 present data on U.S. processors' U.S. shipments and Canadian processors exports to the United States by product cut and by temperature, respectively. As shown in table I-3, shares of sales by cut between sources were roughly comparable in 2002.[80] The ability to vary overall product mix is, of course, somewhat restricted in a livestock product since there are almost no intra-processor sales. However, there is some evidence on the record that there can be variations in selling patterns that reflect such consumer preferences as the desire to purchase dark meat within the ultra-

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[74] (...continued)
tolerance for feathers on dressed poultry carcasses; however, in practice it is accepted that a few feathers will be present on some carcasses. Canadian requirements for feathers on dressed poultry carcasses are the same for kosher poultry as for non-kosher poultry. E-mail, dated January 2, 2004, from CFIA.

U.S. poultry products inspection regulations are provided in 9 Code of Federal Regulations (CFR), part 381. With respect to feathers and/or pin feathers less than 1 inch long, a maximum of 3 incidents per carcass are permitted (with 5 to 10 feathers per carcass scored as one incident, 11 to 15 feathers per carcass as 2 incidents, and 16 or more feathers as 3 incidents). Feathers that are more than 1 inch long are allowed as a maximum of 3 incidents per carcass (with 1 to 3 feathers per carcass scored as 1 incident, 4 to 6 per carcass as 2 incidents, and 7 or more as 3 incidents). Any person who slaughters, processes, or otherwise handles poultry or poultry products which have been or are to be processed as required by recognized religious dietary laws may apply for exemptions from specific provisions of the regulations which are in conflict with such religious dietary laws. (9 CFR, section 381.11 Exemptions based on religious dietary laws.) E-mail, dated January 2, 2004, from CFIA. All of the domestic processors are believed to be operating under such exemptions. Fax, dated January 6, 2004, from Empire (Harry Geedey).

[75] Conference transcript, pp. 128-129. *** indicates that the Canadian Food Inspection Agency has "zero tolerance" for feathers.

[76] Empire testified that its most recent competitive comparison, where a feather was defined as anything breaking the skin, showed the Chai chicken to have 20 feathers to the 40 feathers of the Empire bird. Conference transcript, pp. 29-31 and 66.

[77] Staff conversation with ***, December 23, 2003. ***. *Id.*

[78] Conference transcript, pp. 38-40.

[79] Respondents' postconference brief, p. 19.

[80] Relatively more Canadian-processed chicken is sold cut up than U.S.-processed chicken; the majority of Canadian-processed breasts are sold with the bone in whereas the U.S.-processed breast is more frequently sold as boneless.

orthodox community while OU customers prefer white meat.[81] Respondents' state that ". . . individual companies have different pricing strategies to maximize revenue per chicken . . ." and that "{u}ltimately, each producer must sell the entire chicken . . .."[82] Also, as shown in table I-4, there are some differences, by source, in the temperature at which kosher chicken is sold. Almost all of the subject kosher chicken from Canada was imported as a fresh product in 2002 (*** percent), whereas a lesser share (*** percent) of the U.S.-processed chicken was sold as fresh or chilled. Empire testified at the Commission's conference that frozen chicken is a big part of its sales.[83]

Table I-3
Kosher chicken: U.S. processors' U.S. shipments and Canadian processors' U.S. exports, by product cut, 2002

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Table I-4
Kosher chicken: U.S. processors' U.S. shipments and Canadian processors' U.S. exports, by product temperature, 2002

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DOMESTIC LIKE PRODUCT ISSUES

The Commission must determine what domestic product is like, or in the absence of like, most similar in characteristics and uses to, the imported articles as defined in Commerce's scope. The Commission's "like" product determination is based on a number of factors, including (1) physical characteristics and uses: (2) common manufacturing facilities and production employees, (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price. Most of these factors were discussed earlier in this part of the report. Additional information on interchangeability, customer and producer perceptions, and channels of distribution is presented in Part II and information on the pricing of kosher chicken is presented in Part V.

The petitioner contends that the domestic like product consists of kosher chicken, coextensive with the scope of the investigation.[84] Respondents contend that kosher chicken sold under specific rabbinical certifications are domestic like products distinct from kosher chicken sold under other certifications because, in their view, clear dividing lines in customer and producer perceptions, interchangeability, employees, and channels of distribution exist for kosher chicken based upon the rabbinical certification.[85]

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[81] *See*, for example, the testimony of Vineland that its customers prefer to purchase dark meat. Conference transcript, p. 57. Respondents testified that the preference for dark meat is driven by the lower prices of that type of meat since "a lot of big families would rather buy the leg quarters, because its cheaper . . .." Conference transcript, p. 124.

[82] Respondents' postconference brief, pp. 23-24.

[83] Conference transcript, p. 56.

[84] Petition, p. 4.

[85] Respondents' postconference brief, pp. 3-11.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

MARKET CONSIDERATIONS

The market for kosher chicken in the United States is relatively small and well-defined, consisting mainly of kosher-observant households[1] and institutions such as schools, hospitals, restaurants, hotels, and nursing homes that offer kosher meals to patrons. The small size of the kosher chicken market is also reflected in the small number (4) of U.S. processors: Empire, AgriProcessors, Vineland, and David Elliot Poultry.[2] All known kosher chicken imported into the U.S. market originates in Canada; Chai and Marvid are the only two processors of Canadian kosher chicken.

Kosher chicken is sold in most regional markets within the United States. For example, Empire reported sales of kosher chicken *** during the period examined, while Vineland reported its regional markets as ***. Importers, as a whole, also sold kosher chicken in a variety of U.S. markets, but individually tended to focus on one geographic region. For example, three of ten importers reported that their primary market was the West Coast. Similarly, four importers reported the Northeast as their primary market,[3] and one reported South Florida as its main market. Only one importer, ***, reported that it sold kosher chicken nationwide. *** reported a lack of commercial sales of kosher chicken during the period examined.

CHANNELS OF DISTRIBUTION

Kosher chicken is delivered to consumers through a network of kosher wholesalers which, in turn, distribute kosher chicken to kosher retailers and restaurants as well as kosher institutions and businesses that offer kosher meals. Kosher chicken processed in Canada enters the U.S. distribution system via importers, many of which are distributors, and which in turn sell to downstream distributors and/or outlets/vendors. Overall, the customer base of both U.S. processors and importers is fragmented, consisting mainly of small butcher shops, caterers, and hotels which, in turn, sell kosher chicken to consumers. Indeed, of the U.S. processors' top customers of kosher chicken,[4] only *** were reported as major customers by importers of kosher chicken from Canada.

U.S. MARKET SEGMENTATION

As described in Part I, kosher chicken is processed in a kosher plant according to kosher standards. Since Kosher-observant Jews are not allowed to eat non-kosher chicken, the observance of kosher practices effectively divides the market for kosher chicken into kosher and non-kosher market segments. Although kosher chicken can be used in non-kosher applications, the high relative cost of

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[1] Of the 5.8 million Jews living in the United States, it is estimated that only about 1 million maintain kosher households, petition, p. 7.

[2] A fifth U.S. processor, King David Poultry, went out of business after only four months of operation in the Spring of 2002. "King David Kosher to Reopen Soon, Owner Insists," Kosher Today, found at Internet address *http://www.koshertoday.com/weekly%20news%20archives/2002/100702.htm#1*, October 7, 2002, retrieved on December 9, 2003.

[3] ***.

[4] U.S. processors were asked to list their top ten customers. Empire and Vineland listed *** customers; *** AgriProcessors and David Elliot listed *** and *** customers, respectively.

kosher chicken as well as its religious associations typically act as a dividing line between the markets for kosher and non-kosher chicken.[5]

Rabbinical supervision and the process by which kosher products are certified can create specific market sub-segments within the overall market for kosher chicken. In order to ensure that kosher guidelines are met, certification agencies monitor the processes and ingredients used in the preparation of kosher products and certify that such products are prepared according to kosher guidelines. While there are many kosher certifying agencies in the United States, the most common is the Union of Orthodox Jewish Congregations (OU), which certifies thousands of products ranging from vegetable soup to tea. The OU certification serves the broad market for kosher products and is acceptable to the vast majority of kosher-observant Jews. However, certain communities/sects of the ultra-orthodox Jewish community prefer to have their meat prepared and certified to a higher level of kashrut. While there are dozens of ultra-orthodox communities/sects within the United States, two of the largest are the Chasidic sects of Lubavitch and Satmar. Members of the Lubavitch sect typically require Lubavitch certification, while members of the Satmar sect require the CRC certification; other common certifications acceptable to certain ultra-orthodox sects in the United States include COR, Crown Heights, Rabbi Gornish, Star-K, Belz, and Nirbater Rav. Typically, certifications acceptable to the ultra-orthodox community are associated with a familiar, trusted rabbi who is a member of their particular community sect.

Both petitioners and respondents were asked to identify, in their postconference briefs, the amount of kosher chicken sold, in percentage terms, under various kosher certifications. Regarding U.S. processors, Empire reported that it sold *** percent of its kosher chicken under the OU certification, *** percent under the Nirbater Rav certification, *** percent under the Star-K certification, and *** percent under the Belz certification.[6] Vineland, which bears both the OU and CRC certifications, reported that it sells *** percent of its kosher chicken to the Satmar sect on the basis of its CRC certification. Similarly, David Elliot, which bears both the OU and Crown Heights certifications, reported that it sells *** percent of its kosher chicken to Lubavitch Jews on the basis of its Crown Heights certification. According to the petitioners, AgriProcessors sells kosher chicken under the KAJ/OU, Margaretena, and Crown Heights certifications. According to petitioner, *** percent of AgriProcessors chicken is sold under the KAJ/OU certification, with the remaining being sold under the Margaretena and Crown Heights certifications.

On the part of Canadian processors, Chai Poultry reported that it sells *** percent of its kosher chicken under the supervision of Rabbi Dovid Schochet Rav of the Lubavitch Community in Toronto, serving the Lubavitch community in the United States. The remaining *** percent is sold to certain members of the orthodox community on the basis of the COR certification; Chai kosher chicken does not bear the OU certification. On the other hand, Marvid, whose kosher chicken bears either the CRC/OU or the Rabbi Gornish/OU certification, reported that it sells *** percent of its kosher chicken to the Satmar sect on the basis of the CRC certification and *** percent to the followers of Rabbi Gornish on the basis of its Rabbi Gornish certification. The remaining *** percent was classified as "uncertain."

Generally, kosher-observant Jews in the broad market for kosher chicken (OU) find ultra-orthodox certifications acceptable. On the other hand, members of ultra-orthodox Jewish communities will typically only purchase kosher chicken bearing the certification required by their particular sect, although kosher chicken bearing ultra-orthodox certifications often bear the OU certification too.[7]

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[5] Petition, p. 9.

[6] ***.

[7] Commission staff conducted telephone interviews with *** on January 6-8, 2004. According to ***, consumers of kosher chicken purchase on the basis of allegiance, affiliation, and/or loyalty to a certain rabbi/sect/group/community. As a result, it is not common for consumers who purchase kosher chicken under one certification to

(continued...)

To gain further insight into the issues of market segmentation, kosher certification, and competitive conditions in the U.S. market for kosher chicken, Commission staff interviewed *** importers of Canadian kosher chicken, ***, which also purchases domestic kosher chicken. The questions posed to the importers, as well as their responses, are detailed in table II-1 below.

Table II-1
Kosher chicken: Responses of major U.S. importers to questions of the Commission staff

Question	*** responses (*** % of U.S. imports)	*** responses (*** % of U.S. imports)	*** responses (*** % of U.S. imports)
1. Do you purchase kosher chicken from both domestic and Canadian sources?	Yes	Yes	Yes
2. Which purchase factors are most important in the U.S. market for kosher chicken?	-Certification very important -Price is always important -Quality (Canadian chicken is featherless; U.S. chicken is not)	-Price is important -Quality is roughly comparable; ***	-Quality is the most important, the Canadian chicken is featherless
3. Under which certifications do you sell kosher chicken?	***	***	***
4. What is the extent of certification cross-over?	-Not much crossover between OU and COR	-OU purchasers will buy CRC (quite common); CRC purchasers will not buy OU	-Limited crossover -Empire focuses on orthodox Jewish market -Chasidic sects separate -Butcher shops typically require OU certification
5. Who aggressively markets kosher chicken?	-Domestic processors are very aggressive with their pricing -Competition between Empire and Agri is intensive, mainly on the basis of price	-In our limited market, nobody markets to us aggressively	-Empire/Agri both very aggressive on price -Vineland is very price aggressive in OU market w/ left-over white meat -In general, U.S. processors are aggressive; Canadians are not aggressive

Continued.

[7] (...continued)
crossover and purchase chicken under a different certification. OU purchasers will, however, buy chicken bearing other certifications. On the other hand, the Satmar and Lubavitch sects will typically only purchase chicken bearing the CRC or Lubavitch certification (of the two, Satmar would probably never purchase an Empire OU chicken, while Lubavitch Jews might purchase one if a Lubavitch chicken were not available). Commission staff also conducted telephone interviews with ***, during January 6-8, 2004. According to ***, there is little crossover between certifications. However, when crossover does occur, OU customers are more likely to purchase other certifications, although the amount of crossover is minimal. On the other hand, purchasers of chicken bearing the certifications of CRC, COR, and Rabbi Gornish will not purchase kosher chicken bearing only the OU certification. Similarly, orthodox Lubavitch will also not purchase OU chicken, although less orthodox Lubavitch Jews might purchase a chicken bearing only the OU certification if nothing else were available.

Table II-1--*Continued*
Kosher chicken: Responses of major U.S. importers to questions of the Commission staff

Question	*** responses (*** % of U.S. imports)	*** responses (*** % of U.S. imports)	*** responses (*** % of U.S. imports)
6. Are the prices at which you import kosher chicken typically lower than, the same as, or higher than domestic kosher chicken?	-Yes, import prices are higher	-Import prices are higher than domestic prices	-We pay more for chicken coming into the U.S. than we pay for domestic kosher chicken
7. Are the prices at which you sell Canadian kosher chicken in the wholesale market typically lower than, the same as, or higher than domestic kosher chicken?	-Canadian prices are higher	-Kosher chicken from Canada is generally slightly higher	-Canadian kosher chicken is more expensive than U.S. chicken

SUPPLY AND DEMAND CONSIDERATIONS

Domestic Supply

Based on available data, U.S. processors are likely to respond to changes in price with moderate changes in the quantity of shipments of U.S.-produced kosher chicken to the U.S. market. The main contributing factors to this supply responsiveness is excess industry capacity. U.S. processors also maintain inventories, albeit at relatively low levels (fresh chicken is a perishable product), from which they can respond to changes in price and demand.

Industry Capacity

The capacity of U.S. kosher chicken increased during the period of the investigation. U.S. processors' capacity increased by 0.5 percent from 189.9 million pounds in 2000 to 190.9 million pounds in 2002, and by 0.8 percent from 141.5 million pounds in interim 2002 to 142.7 million pounds in interim 2003. During the same period, however, U.S. production of kosher chicken decreased by 3.2 percent from 107.7 million pounds in 2000 to 104.2 million pounds by the end of 2002. During the interim periods, however, U.S. production increased by 1.6 percent from 79.1 million pounds in interim 2002 to 79.7 million pounds in interim 2003. As a result, the capacity utilization of U.S. processors decreased from 56.7 percent in 2000 to 54.6 percent in 2002. Similarly, capacity utilization decreased from 55.9 percent during interim 2002 to 55.8 percent during interim 2003. Thus, excess capacity may exist from which to expand production of kosher chicken in response to changes in price and demand (reported U.S. producers' capacity is *** than apparent U.S. consumption, and U.S. production is *** to apparent U.S. consumption).

Export Markets

Of the U.S. processors, *** reported export shipments of kosher chicken during the period examined, although export shipments were *** in comparison to domestic shipments. According to

questionnaire data, Empire exported *** pounds of kosher chicken during 2002, up *** percent from *** pounds of kosher chicken in 2000. *** also increased its exports of kosher chicken by *** percent during the interim periods, from *** pounds in 2002 to *** pounds in 2003. At the conference, Empire testified that its main export markets were Canada and Panama.

Inventory Levels

U.S. processors' inventories of kosher chicken were relatively low during the period examined. For example, the ratio of inventories to total shipments at the end of 2002 was approximately *** percent, up from *** percent during the same period in 2000. During the interim periods, the ratio of inventories to total shipments increased from *** percent in interim 2002 to *** percent in interim 2003. These relatively low inventory levels of U.S. processors indicate a limited ability to respond to price changes to meet increased demand for kosher chicken from inventories on hand.[8]

Production Alternatives

*** reported that they did not produce other products using the same equipment, machinery, and labor used in the production of kosher chicken. *** the plant is not operated on Saturday, in keeping with Jewish custom (kashrut). On the other hand, *** reported that time constraints associated with close rabbinical supervision limited its production to *** chickens per day. *** did not provide information on processing constraints. ***.

Subject Imports

Based on available information, Canadian processors of kosher chicken are likely to respond to changes in price and demand in the U.S. market with moderate changes in the quantity of shipments of kosher chicken. The main constraints on responsiveness include *** excess capacity and *** inventory levels. The Canadian processors' only export market is the United States. As a result, they cannot divert shipments from exports from other export markets to the United States in response to changes in price and demand.[9] However, the significant size of the Canadian home market gives the Canadian processors some flexibility, allowing them to divert kosher chicken from the home market to the U.S. market in response to changes in demand in the United States.

Industry Capacity

Reporting Canadian processors' average capacity to produce kosher chicken increased by *** percent from *** pounds in 2000 to *** pounds by the end of 2002, and increased by *** percent from *** pounds in interim 2002 to *** pounds in interim 2003. Similarly, Canadian production of kosher chicken increased by *** percent from *** pounds in 2000 to *** pounds in 2002, and increased by *** percent from *** pounds in interim 2002 to *** pounds in interim 2003. As a result, reported Canadian kosher chicken capacity utilization increased from *** percent in 2000 to *** percent by the end of 2002,

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[8] Due to the perishable nature of the product, most chicken is sold fresh.

[9] On pages 19-20 of the petition, Empire contends that the Canadian government's *Farm Products Marketing Act* strictly controls the price and production of chicken for domestic use. At the same time, Empire asserts that this Act encourages exports of chicken by allowing processors to increase chicken production provided the product is destined for export.

and decreased from *** percent in interim 2002 to *** percent in interim 2003. Thus, data provided by reporting Canadian processors' of kosher chicken indicate that they have limited spare capacity from which to expand production in response to changes in demand and prices.

Alternative Markets

Reporting Canadian processors' home market shipments, relative to their total shipments, decreased from *** percent in 2000 to *** percent by the end of 2002. Home market shipments relative to total shipments decreased from *** percent in interim to 2002 to *** percent in interim 2003. Canadian processors of kosher chicken export only to the United States.

The large percentage of total shipments that are shipped domestically indicates a substantial ability on the part of reporting Canadian processors to divert kosher chicken to the U.S. market in response to changes in price or demand.

Inventory Levels

The ratio of Canadian processors' inventories to total shipments decreased from *** percent in 2000 to *** percent in 2002. The ratio of inventories to total shipments fell from *** percent in interim 2002 to *** percent in interim 2003. The *** inventory levels of kosher chicken, due to the perishable nature of kosher chicken, limits the ability of Canadian processors to respond to price and demand changes in the U.S. market with inventory on hand.

Production Alternatives

Canadian processors of kosher chicken produce other products using the same equipment, machinery, and labor used in the production of kosher chicken. According to Marvid, for example, kosher chicken *** of its sales in 2002. ***. ***, Chai reported that "kosher chicken *** of its sales in 2002; ***.

U.S. Demand

The U.S. demand for kosher chicken is dictated by the amount of kosher chicken purchased by kosher-observant households and kosher-observant businesses, including hospitals, restaurants, nursing homes, hotels, schools, cruise lines, and airlines. In general, livestock sales tend to fall during periods of economic weakness, especially more expensive meats such as steaks and niche products such as kosher chicken.[10] As a result, economic weakness in the United States, the high price of kosher chicken relative to other food products, and the availability of substitutes for kosher chicken (see next section entitled "Substitutability Issues") may have had a downward effect on demand for kosher chicken.

In their questionnaire responses, U.S. processors' description of demand conditions varied. For example, *** reported that demand within the United States for kosher chicken has remained unchanged since January 1, 2000.[11] On the other hand, *** reported that demand for kosher chicken in the U.S. market decreased during the period examined as a result of excess supply and lower prices. ***,

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[10] "Macon chicken plant venture goes sour," Atlanta Journal-Constitution, January 25, 2003, found at Internet address *http://www.accessatlanta.com/ajc/business/0103/25plant.html*, retrieved on March 11, 2003.

[11] *** reported that demand for kosher chicken, which is at a ten-year low, is unaffected by the price of kosher beef, which is at historically high levels.

however, indicated that demand in the United States had increased during the period examined, citing the perceived health benefits of kosher products and increased marketing of kosher products. *** did not provide information related to the demand for kosher chicken.

Importers also varied in their descriptions of demand conditions for kosher chicken within the U.S. market. For example, *** reported that demand had increased during the period examined.[12] On the other hand, *** reported that demand within the United States for kosher chicken has been unchanged. *** reported a lack of knowledge about the overall U.S. market for kosher chicken. However, it did acknowledge that demand for kosher chicken in the *** market had increased due to the rising cost of beef. Relatedly, *** reported that demand for Canadian chickens has increased due to the higher quality of Canadian kosher chicken vis-a-vis U.S. kosher chicken.[13] *** reported that U.S. demand for kosher chicken had increased, citing an increase in demand for kosher chicken with a higher certification (Lubavitch). *** reported a lack of information related to the demand for kosher chicken in the United States. According to respondents, two opposing forces are at work within the U.S. market for kosher chicken; on one hand, the secularization of the Jewish community has decreased demand for kosher chicken in the United States, while on the other hand, the large size of ultra-orthodox Jewish families and the rate of population growth within the community has led to an increase in demand.[14]

*** reported no significant changes in the product range or marketing of kosher chicken in the U.S. market during the period examined. ***, however, reported that competition from Canada forced price reductions in all U.S. market regions. Seven importers reported no changes in the marketing or product range of kosher chicken during the period examined. On the other hand, three importers reported a change in marketing practices and/or product range related to the increased availability of Lubavitch chicken. For example, *** reported the increasing availability of Lubavitch chicken during the period examined. *** also reported the increasing availability of Lubavitch chicken from Canada in the United States. Similarly, *** reported that customers prefer Canadian kosher chicken over kosher chicken processed in the United States.

Based on Commission questionnaire responses, apparent U.S. consumption of kosher chicken increased by approximately *** percent from *** pounds in 2000 to *** pounds in 2002. Apparent U.S. consumption increased by *** percent from *** pounds in interim 2002 to *** pounds during interim 2003.

Demand Characteristics

Substitute Products

*** reported kosher beef, kosher turkey, and kosher lamb as substitute products for kosher chicken. *** reported that kosher turkey is a substitute for kosher chicken, while *** reported that no substitutes exist for kosher chicken. *** did not provide information on substitute products. Five

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[12] *** reported that increased demand during the period of investigation was caused by a dramatic increase in Lubavitch Jews, as well as increased demand from non-Jews. *** cited population growth as the reason for increased demand for kosher chicken during the period examined and *** reported that demographics accounted for the increase in demand of kosher chicken. Lastly, *** reported increased awareness of the quality of kosher chicken as accounting for demand increases.

[13] *** reports that demand for kosher chicken imported from Canada has increased because Canadian chickens are cleaner, unbruised, and featherless. *** also reports that demand for Canadian kosher chickens is increasing because they are fresher, i.e., "do not smell."

[14] Telephone interview with ***, December 18, 2003.

importers, ***, reported that kosher turkey, kosher beef, kosher veal/lamb, kosher bison, and kosher fish are substitutes for kosher chicken; all four reported that the price of substitute products did not affect the price of kosher chicken. *** reported that no substitutes products exist for kosher chicken. *** did not provide information on substitute products.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported kosher chicken depends upon several factors. For example, relative prices, quality (e.g., feather count, kosher certification, reliability of supply, etc.), and conditions of sale (e.g., price discounts/rebates, delivery lead times, payment terms, etc.) all play a role in determining the ability and/or willingness of the purchasers of kosher chicken to substitute domestic kosher chicken for kosher chicken imported from Canada. Based on available data, staff believes that there is a moderate degree of substitutability between imported and domestic kosher chicken.

Comparison of Domestic Products with Subject and Nonsubject Imports

U.S. processors of kosher chicken were asked whether domestic kosher chicken and imported kosher chicken were interchangeable. *** all reported that domestic kosher chicken and Canadian kosher chicken were "Always" interchangeable; *** reported no information related to the interchangeability of kosher chicken.[15] U.S. processors were also asked whether non-price differences between domestic kosher chicken and imported kosher chicken were a significant factor in the sale of kosher chicken. *** reported that non-price factors were "Sometimes" a factor between domestic kosher chicken and Canadian kosher chicken and between domestic chicken and kosher chicken imported from nonsubject countries.[16] *** reported that non-price factors were "Always" a factor when comparing domestic and Canadian kosher chicken, but reported no familiarity between comparisons of domestic kosher chicken and nonsubject kosher chicken, nonsubject kosher chicken and Canadian kosher chicken, or kosher chicken from various nonsubject countries. *** reported non-price factors are "Always" a significant factor between kosher chicken from the United States, Canada, and nonsubject countries. *** did not provide information related to non-price factors.

Importers were also asked whether kosher chicken from various sources are interchangeable. *** all reported that kosher chicken processed in the United States and Canada were "Sometimes" interchangeable.[17] *** reported that domestic kosher chicken is "Frequently" interchangeable with

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[15] *** both reported that domestic kosher chicken and kosher chicken imported from nonsubject countries were "Frequently" interchangeable; these firms also reported a lack of familiarity with comparisons between Canadian kosher chicken and nonsubject kosher chicken. *** reported that Canadian kosher chicken and nonsubject kosher chicken were "Always" interchangeable; *** also reported that kosher chicken from various nonsubject countries was "Always" interchangeable.

[16] However, staff has found no evidence of any U.S. imports of kosher chicken from countries other than Canada.

[17] When asked to explain the factors that limit or preclude interchangeability, *** indicated that quality factors limited interchangeability: "People want Canadian Lubavitch chicken. They want no feathers, clean, not bruised, and no smell." *** reported: "All my customers will purchase Lubavitch chickens while not all my customers will purchase non-Lubavitch chickens." Regarding the interchangeability of domestic and Canadian kosher chicken, *** made two points: "(1) Lubavitch customers will only eat Lubavitch chicken—will not eat non-Chassidic shechta or satmar shechta. (2) Non Jews and Jews reluctant to buy non-Canadian kosher chicken because USDA lets U.S. producers leave feathers on chicken." *** wrote on the topic: "(1) Reliability of kosher supervision, (2) Quality of

(continued...)

kosher chicken imported from Canada while *** reported no familiarity related to a comparison between domestic and Canadian kosher chicken. *** reported that domestic and Canadian chicken were not interchangeable.[18] *** did not directly compare kosher chicken processed in the United States with Canadian kosher chicken, but did provide comments related to the factors that limit or preclude the interchangeability of kosher chicken from various sources.[19] None of the importers compared domestic kosher chicken with kosher chicken from nonsubject countries, Canadian kosher chicken with kosher chicken from nonsubject countries, or kosher chicken from nonsubject countries with each other.

Importers/purchasers were also asked to comment on the impact of non-price factors between kosher chicken produced in the United States and other countries. Based upon questionnaire responses and lost sales allegation responses, quality differences between domestic and Canadian kosher chicken appears to be an important non-price factor. For example, *** reported that kosher chicken imported from Canada, unlike domestic kosher chicken, is cleaner, featherless, odorless, and unbruised. Similarly, *** reported that Canadian kosher chicken is both featherless and cleaner than U.S. kosher chicken, while *** reported that Canadian chicken is featherless, unlike domestic kosher chicken. Last, *** and *** reported that Canadian kosher chicken is cleaner (see footnotes below for more detail). The Lost Sales and Lost Revenue section of Part V contains additional comments from two U.S. importers/ purchasers, *** and ***, related to the issues of quality and customer services.

Regarding the importance of non-price factors, *** all reported that non-price factors were "Always" a factor between domestic kosher chicken and kosher chicken imported from Canada.[20] These same importers did not comment on the importance of non-price factors between domestic kosher chicken and nonsubject kosher chicken, Canadian kosher chicken and nonsubject kosher chicken, or kosher chicken from any nonsubject countries with each other. *** reported that non-price factors were "Frequently" a factor between domestic kosher chicken and Canadian kosher chicken, without providing additional country comparisons. *** reported that non-price factors are "Sometimes" a factor between domestic and Canadian kosher chicken[21] and *** reported "No Familiarity." *** did not directly

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[17] (...continued)
product e.g. cleanliness of product, less odor, color, fat content, (3) Style of kashrut preparation (e.g. salting and soaking) and acceptance in the more religious communities in the U.S."

[18] *** explained the factors that limit or preclude interchangeability: " Canada's product is prepacked, with different kosher certification and in demand for excellent and recognized quality."

[19] *** wrote: "'S' Brands are sometimes interchangeable. 'N' under supervision of Rabbi Gornish are never interchangeable." *** wrote: "The Canadian chickens that we imported were sold to customers requiring the CRC supervision on this product."

[20] *** all provided comment on factors which limit or preclude the interchangeability of domestic and Canadian kosher chicken. For example, *** wrote: "The service for the product is one of the best within the industry. The cleanliness of the chicken (featherless) is paramount to extra sales." Similarly, *** wrote: "The cleanliness and texture of the Canadian product is such a great factor that my customers demand this product." *** wrote: "Lubavitch customers will not buy non-Lubavitch chicken...superior quality, feather-free Canadian chicken has no U.S. substitutes...chill pack from East Coast does not last to pull date." *** wrote: "The quality is much better."

[21] ***, when asked about the advantages and disadvantages imparted by non-price factors, wrote: "(1) While some kosher chickens are interchangeable (assuming proper kashrut), there are submarkets within the kosher community, which do not accept as kosher chicken slaughtered by one supervision authority or another e.g. Chai chickens are slaughtered under lubavitch supervision. The lubavitch community are prohibited from eating chickens which are merely kosher (such as Empire) but must have additional supervision and methodology of slaughter. Thus they are not commercially interchangeable for a large segment of the kosher population. (2) There are differences in quality between certain Canadian and American processed chickens. Canadian chickens tend to have less feathers
(continued...)

compare the importance of non-price factors on kosher chicken from various sources, but did provide comment on the importance of non-price factors in narrative format.[22] *** did not comment on the impact of non-price factors on sales of kosher chicken related to comparisons between the United States and Canada with nonsubject countries, or nonsubject countries with each other.

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[21] (...continued)
and therefore require less processing which benefits the ultimate consumers."

[22] *** reported that non-price factors are "significant in legs and cutlets...whole chickens not significant...*** is a clean bird." *** wrote: "The Canadian chickens that we imported were sold to customers requiring the CRC supervision on this product."

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margins of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of three firms that accounted for *** percent of reported U.S. production of kosher chicken during 2002.[1]

U.S. PROCESSORS AND FARMERS

As indicated previously, four kosher chicken processors are known to currently operate in the United States. Each of these firms provided the Commission with questionnaire responses, although one of them (***) was incomplete. Their plant locations, positions on the petition, individual shares of total U.S. production in 2002, and production of kosher chicken as a share of the total weight of the live chicken they acquired for processing are presented in table III-1. None of the responding processors imported or purchased the Canadian product during the period for which data were collected, as noted in table III-1.

Table III-1
Kosher chicken: U.S. processors, locations of processing facilities, positions on the petition, shares of U.S. production, and shares of total chicken processing accounted for by kosher chicken, 2002

Firm	Location of processing facility	Position on the petition	Production (*1,000 pounds*)	Share of total U.S. production (*percent*)	Percent of total pounds of live chicken acquired	
					Kosher chicken[1]	Other[2]
AgriProcessors[3]	Postville, IA	Support	***	***	***	***
David Elliot[3]	Scranton, PA[4]	Support	***[5]	***	***	***
Empire[6]	Mifflintown, PA	Petitioner	***[7]	***	***	***
Vineland[3]	Vineland, NJ	Support	***	***	***	***
Total	--	--	***	100.0	60.6	39.2

Continued.

[1] The share calculations are not based on, and do not include, production by King David, a processor that was operating for only a few months in 2002.

Continuation.

[1] As defined in Commerce's scope definition.
[2] Consists of chicken not meeting Commerce' scope definition (i.e., separated necks, wings, giblets, livers, etc. and any non-kosher chicken), edible offal sold for dog food, and discarded waste (i.e., bones, fat, and skin)).
[3] Firm not owned, in whole or in part, by any other firm.
[4] ***.
[5] Figure represents firm's U.S. shipments.
[6] Firm is ***-percent owned by EK Holdings, Inc., Mifflintown, PA.
[7] Figure includes nonsubject chicken parts such as separated necks and wings but does not include any edible offal or discarded waste.

Note.–No reporting firm imports kosher chicken into the United States or is related to any foreign manufacturer of kosher chicken. In addition, there are minimal purchases of kosher chicken by domestic processors. *** reported purchasing *** pounds of product from *** in 2002 and *** pounds in January-September 2003. The purchases were of ***.

Source: Compiled from data submitted in response to Commission questionnaires, except as noted.

In addition to the firms listed in table III-1, another processor, King David (Macon, GA) was operating from February 2002 to April 2002 before shutting down.[2] The firm provided a partial response to the Commission's producers' questionnaire. King David's founder (Johnny Imerman) further testified at the Commission's conference that his plant closed not because of subject imports from Canada but because he had failed to obtain an OU certification, which was the certification required within his target market.[3] The firm indicated that there are no plans to re-start operations; the facility is standing idle.[4] Also, two new slaughterhouses reportedly will be opening, one in Kiryas Joel, NY, and G&G Kosher Foods (G&G) in Pennsylvania. The Kiryas Joel plant will process 1.5 million chickens annually for the Satmar sect in the New York region (Monroe community).[5] According to a December 2003 news article, it will open once equipment to pre-treat wastewater is installed.[6] The G&G facility will be under the CRC supervision.[7] ***.[8]

Each of the currently operating U.S. processors further processes slaughtered kosher chicken into such products as cooked chicken, chicken bologna, chicken franks, and chicken nuggets. Empire accounted for *** of the reported captive production, with internal consumption of *** pounds of kosher chicken in 2002 or *** percent of its U.S. shipments. AgriProcessors' captive production of *** pounds

[2] The petitioner estimates that King David processed *** chickens per week. Petition, p. 10. Empire processed *** chickens per week in 2002 while AgriProcessors processed *** chickens, Vineland processed *** chickens and David Elliot processed *** chickens. Petition, pp. 10-11. King David's start-up plan called for initially slaughtering *** head of live birds daily. Producer questionnaire response of King David.

[3] Conference transcript, pp. 94-95. King David was supervised by the Organized Kashrus Laboratories (OK). ***.

[4] Conference transcript, p. 129.

[5] "Kiryas Joel plans slaughterhouse, office center," attached as an exhibit to respondents' postconference brief.

[6] "Kiryas Joel set for job creation, local war on poverty" (December 24, 2003), attached as an exhibit to respondents' postconference brief.

[7] Conference transcript, pp. 99-101.

[8] Letter, dated December 25, 2003, from ***.

in 2002 accounted for *** percent of its U.S. shipments and David Elliot's captive production of *** pounds in that year amounted to *** percent of its U.S. shipments. Vineland reported ***.[9]

AgriProcessors processes kosher turkey ***. In 2002, *** percent of AgriProcessors' production was devoted to kosher chicken and *** percent to kosher turkey.[10] Empire also processes kosher turkey, *** on separate production lines.[11] Except for rabbinical rejects that are a byproduct of kosher processing, no firm reported processing non-kosher chicken. In 2002, *** percent and *** percent, respectively, of AgriProcessors' and Empire's total chicken production consisted of the non-kosher byproduct.[12]

In addition to the processors, the petition identified *** farmers that are under contract to grow chickens for Empire.[13] All of the farmers were located in the State of Pennsylvania; ***, none are related to Empire.[14] Only farmers named by Empire were mailed a questionnaire during the preliminary phase of this investigation. The Commission received responses from six farmers, three of which indicated support for the petition and three of which took no position (with two of those firms indicating that there were not familiar with the investigation). With one exception, none of the farmers indicated that they supplied chickens to any non-kosher chicken processors; all of their shipments were to Empire. Four of the responding farmers reported that they farmed products including chickens for the live market, beef cattle for personal use, milk, and grains on the same land or with the same equipment and machinery used to grow the chickens that were supplied to Empire. The production, shipment, and employment data reported by the responding farmers is incomplete. Empire testified at the Commission's conference, however, that it has reduced its production of live birds in Pennsylvania and laid off some of its contracted farmers.[15] Any useful financial information for the farmers is reported in Part VI.

U.S. PRODUCTION, SHIPMENT, AND EMPLOYMENT DATA

Combined data for the three U.S. processors providing complete responses to the Commission's questionnaires are shown in table III-2. Processors' capacity to produce the subject product has remained generally level since 2000 (at a level *** that of apparent U.S. consumption of kosher chicken in each year and period for which data were collected in the investigation). After a *** rise in 2001 compared to 2000, kosher chicken production fell in 2002, resulting in a capacity utilization figure in 2002 that was lower than that at the beginning of the period examined. Capacity utilization in interim 2003 was comparable to that in interim 2002. By firm, AgriProcessors' production rose by *** percent from 2000 to 2002 and again by *** percent in interim 2003 compared to interim 2002 (table III-3). Likewise, the processing quantities reported by Vineland increased *** percent in the 2000-02 period and by ***

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[9] Producer questionnaire responses of AgriProcessors, David Elliot, Empire, and Vineland.

[10] Producer questionnaire response of AgriProcessors.

[11] Conference transcript, p. 73.

[12] Calculated from the producer questionnaire responses of AgriProcessors and Empire. ***. Producer questionnaire responses of David Elliot and Vineland.

[13] AgriProcessors identified *** farmers that supplied chicken to its processing plant during 2000-02 and Vineland works with about *** farmers. David Elliot purchases its chickens from ***. *Producer questionnaire responses* of AgriProcessors and David Elliot, and ***. The contracting farmers for each processor supply chickens only to that processor. Conference transcript, p. 23; staff conversation, January 12, 2003, with AgriProcessors (***); e-mail, dated December 30, 2003 from ***.

[14] Fax, dated January 6, 2004, from Empire (Harry Geedey).

[15] Conference transcript, p. 20.

Table III-2
Kosher chicken: U.S. processors' capacity, processing quantity, capacity utilization, shipments, end-of-period inventories, and employment-related indicators, 2000-02, January-September 2002, and January-September 2003

Item	Calendar year			January-September	
	2000	2001	2002	2002	2003
Capacity (*1,000 pounds*)[1]	189,866	189,866	190,866	141,472	142,672
Processing quantity (*1,000 pounds*)[1]	107,652	108,016	104,193	79,078	79,666
Capacity utilization (*percent*)[1]	56.7	56.9	54.6	55.9	55.8
U.S. shipments:					
Quantity (*1,000 pounds*)	100,919	101,334	98,228	72,040	74,475
Value (*1,000 dollars*)	139,452	142,623	138,273	101,406	105,432
Unit value (*per pound*)	$1.38	$1.41	$1.41	$1.41	$1.42
Exports:					
Quantity (*1,000 pounds*)	***	***	***	***	***
Value (*1,000 dollars*)	***	***	***	***	***
Unit value (*per pound*)	$***	$***	$***	$***	$***
Total shipments:					
Quantity (*1,000 pounds*)	***	***	***	***	***
Value (*1,000 dollars*)	***	***	***	***	***
Unit value (*per pound*)	$***	$***	$***	$***	$***
Inventories (*1,000 pounds*)	5,845	5,592	5,808	4,120	4,806
Ratio of inventories to total shipments (*percent*)[2]	***	***	***	***	***
Production and related workers (PRWs)	1,525	1,475	1,446	1,423	1,423
Hours worked by PRWs (*1,000 hours*)	3,428	3,347	3,276	2,424	2,429
Wages paid to PRWs (*1,000 dollars*)	39,233	36,576	35,260	25,977	25,366
Hourly wages	$11.44	$10.93	$10.76	$10.72	$10.45
Productivity (*pounds produced per hour*)	31.4	32.3	31.8	32.6	32.8
Unit labor costs (*per pound*)	$0.36	$0.34	$0.34	$0.33	$0.32

[1] Capacity and production figures include chicken parts not meeting Commerce's scope definition (e.g., separated necks and wings) for Empire.
[2] January-September ratios were calculated using annualized total shipment data.

Source: Compiled from data submitted in response to Commission questionnaires.

Table III-3
Kosher chicken: U.S. processors' capacity, processing quantity, capacity utilization and U.S. shipments, by firm, 2000-02, January-September 2002, and January-September 2003

Item	Calendar year			January-September	
	2000	2001	2002	2002	2003
Capacity (*1,000 pounds*): AgriProcessors	***	***	***	***	***
Empire[1]	***	***	***	***	***
Vineland[2]	***	***	***	***	***
Total	189,866	189,866	190,866	141,472	142,672
Processing quantity (*1,000 pounds*): AgriProcessors	***	***	***	***	***
Empire[1]	***	***	***	***	***
Vineland	***	***	***	***	***
Total	107,652	108,016	104,193	79,078	79,666
Capacity utilization (*percent*): AgriProcessors	***	***	***	***	***
Empire[1]	***	***	***	***	***
Vineland	***	***	***	***	***
Total	56.7	56.9	54.6	55.9	55.8
U.S. shipments: Quantity (*1,000 pounds*): AgriProcessors	***	***	***	***	***
Empire	***	***	***	***	***
Vineland	***	***	***	***	***
Total	100,919	101,334	98,228	72,040	74,475
Value (1,000 *dollars*): AgriProcessors	***	***	***	***	***
Empire	***	***	***	***	***
Vineland	***	***	***	***	***
Total	139,452	142,623	138,273	101,406	105,432
Unit value (*per pound*): AgriProcessors	$***	$***	$***	$***	$***
Empire	***	***	***	***	***
Vineland	***	***	***	***	***
Total	1.38	1.41	1.41	1.41	1.42

[1] Includes chicken parts not meeting Commerce's scope definition (i.e., separated necks and wings).
[2] ***.

Note.–Does not include data for David Elliot. In 2002, capacity utilization for David Elliot was approximately *** percent and the unit value of its U.S. shipments was $*** per pound.

Source: Compiled from data submitted in response to Commission questionnaires.

percent in the interim period. Empire's production figures, in contrast, fell by *** percent from 2000 to 2002 and by *** percent from interim 2002 to interim 2003. The volumes of U.S. shipments reported by the three firms followed comparable trends, except that Empire's U.S. shipments rose by *** percent in January-September 2003 compared to January-September 2002.[16] Capacity utilization ratios for the three firms differed ***, with AgriProcessors operating at *** (*** percent in 2002), Vineland operating at *** percent, and Empire operating at a *** percent. The unit values of the firms' U.S. shipments changed only minimally during the periods examined, although there were again reported differences among firms with the unit value of U.S. shipments reported by *** (table III-3).

As discussed earlier in this report, each of the U.S. processors produces to a different set of certifications, although there are some overlaps (particularly in the OU market). ***.[17] There appear, however, to be some differing sales channels for individual U.S. processors. As shown in table I-1, most of the kosher chicken processed by *** is sold through distributors, whereas *** typically sells directly to end users (mainly to kosher-certified retailers). *** of the direct sales to non-kosher retailers were by ***. ***, however, made almost no direct sales to kosher-certified institutions, a distribution channel that represented a source of sales for ***.

The volumes of captive shipments and exports of kosher chicken are relatively insignificant in this industry, accounting for only *** percent and *** percent, respectively, of total shipments in 2002 (table III-4).[18] Inventories of kosher chicken fluctuated slightly and accounted for *** percent of total shipments in 2002 (table III-2). A number of employment-related indicators (i.e., the number of PRWs, hours worked, wages paid, and hourly wages) fell from 2000 to 2002, with mixed trends shown in the interim periods. Productivity was slightly higher in 2002 compared to 2000, and up in interim 2003 compared to interim 2002, and unit labor costs fell steadily, albeit minimally, throughout the period examined.

Table III-4
Kosher chicken: U.S. processors' shipments, by types of shipments, 2000-02, January-September 2002, and January-September 2003

* * * * * * *

[16] Because of spoilage and other loss and *** inclusion of some nonsubject data in their production figures, the quantities of production, shipments, and inventories in table III-2 do not completely reconcile.

[17] Staff conversation with ***, December 23, 2003. Respondents argue that ***. Respondents' postconference brief, p. 24. ***.

[18] The petitioner alleges that U.S.-produced kosher chicken cannot compete in the Canadian market due to Canada's Tariff Rate Quota (TRQ) system. Under the TRQ system, the amount of chicken that can be imported is limited based on the amount of growth realized in Canada's domestic chicken market. The TRQ system reportedly results in U.S.-produced kosher chicken being prohibitively priced in Canada. Petition, pp. 19-20.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

Approximately 11 firms were identified during the preliminary phase of this investigation as importing kosher chicken from Canada during the period examined and were sent questionnaires.[1] Ten of these firms provided responses to the Commission's importers' questionnaire; however, the data for a number of the responding firms was incomplete. Consequently, exports to the United States of kosher chicken reported by the two Canadian processors were used in this report to measure U.S. imports of kosher chicken from Canada.[2] As indicated earlier, kosher chicken is processed by two firms (Chai and Marvid) in Canada. All of Marvid's U.S. exports are imported through two distributors, Alle and West Side.[3] Chai, in contrast, exports through a number of distributors and retailers. In 2002, its five largest U.S. importers of the subject product consisted of ***.[4] Responding and non-responding U.S. importers are listed in table IV-1 along with their locations and reported U.S. imports in 2002. Of the listed firms, at least *** also purchase kosher chicken from the domestic industry. Specifically, West Side is Empire's largest customer (at *** percent of its sales in 2002); ***.[5]

---

[1] Additional questionnaires were mailed to those firms identified in documents of the Bureau of Customs and Border Protection (Customs) as importing under the HTS subheadings that include the subject imports. The four HTS subheadings under which the subject product is imported (i.e., HTS subheadings 0207.11.00 (chickens not cut in pieces, fresh or chilled), 0207.12.00 (chickens not cut in pieces, frozen), 0207.13.00 (chicken cuts and offal, fresh or chilled), and 0207.14.00 (chicken cuts and offal, frozen) are aggregate categories that consist of both kosher and non-kosher chicken.

[2] Official Commerce statistics are not available for U.S. imports of kosher chicken since, as indicated, the four HTS subheadings under which the subject product is imported are aggregate categories that consist of both kosher and non-kosher chicken.

[3] Conference transcript, pp. 101-103.

[4] *Foreign producer questionnaire response* of Chai. Additional U.S. importers of kosher chicken manufactured by Chai not listed in table IV-1 consist of ***. Fax, dated December 19, 2003, from counsel for respondents.

[5] ***.

Table IV-1
Kosher chicken: U.S. importers, their locations, and reported U.S. imports, 2002

Firm	Location	Reported U.S. imports (*1,000 pounds*)	Share of U.S. imports (*percent*)	Foreign manufacturer
Firms that responded to the Commission's importers' questionnaire				
Alle[1]	Maspeth, NY	***	***	Marvid
Eastside[1]	Denver, CO	***	-	(2)
Kessler[1]	Woodbridge, NY	***	***	(2)
Kosher Brands[1]	N. Miami, FL	***[3]	***	Chai
Kosher Club[1]	Los Angeles, CA	***	***	Chai
Munchik[1]	Brooklyn, NY	***	***	Chai
S' Better Farms[1]	Carson City, NV	***	***	Chai
Shalom & Sons[1]	Los Angeles, CA	***	***	Chai
Ventura[1]	Tarzana, CA	***	***	Chai
West Side[1]	Bronx, NY	***[4]	***	Marvid
Subtotal	--	***	100.0	
Firms that did not provide a response to the Commission's importers' questionnaire				
***	***	(5)	--	--

[1] Firm is not owned, in whole or in part, by any other firm.
[2] Not listed.
[3] ***.
[4] Estimated.
[5] Petitioner estimates that *** imported *** pounds in 2002.

Source: Compiled from data submitted in response to Commission questionnaires and from the petition (exhibit 14).

DATA ON U.S. IMPORTS, APPARENT U.S. CONSUMPTION, AND U.S. MARKET SHARES

Table IV-2 presents data on U.S. imports of kosher chicken along with apparent U.S. consumption and U.S. market shares. As shown, apparent U.S. consumption rose somewhat from 2000 to 2001 (rising by *** percent in terms of volume) and then fell from 2001 to 2002 (decreasing by *** percent in terms of volume). From interim 2002 to interim 2003, apparent U.S. consumption again increased (by *** percent in terms of volume). During this period, the quantity of U.S. subject imports rose steadily, increasing by *** percent and *** in 2001 and 2002, respectively, and by *** percent in January-September 2003 compared to January-September 2002. Accordingly, Canadian importers' shares of U.S. apparent consumption increased in each period from *** percent, in terms of quantity, in 2000 to *** percent in January-September 2003. U.S. processors' shares of U.S. apparent consumption

Table IV-2
Kosher chicken: U.S. imports, apparent U.S. consumption, market shares, and ratios of imports to U.S. production, 2000-02, January-September 2002, and January-September 2003

Item	Calendar year			January-September	
	2000	2001	2002	2002	2003
U.S. imports from Canada:[1] Quantity (*1,000 pounds*)	***	***	***	***	***
Value (*1,000 dollars*)	***	***	***	***	***
Unit value (*per pound*)	$***	$***	$***	$***	$***
U.S. processors' U.S. shipments: Quantity (*1,000 pounds*)	100,919	101,334	98,228	72,040	74,475
Value (*1,000 dollars*)	139,452	142,623	138,273	101,406	105,432
Unit value (per *pound*)	$1.38	$1.41	$1.41	$1.41	$1.42
U.S. consumption: Quantity (*1,000 pounds*)	***	***	***	***	***
U.S. processors' share (*percent*)	***	***	***	***	***
Importers' share (*percent*)	***	***	***	***	***
U.S. consumption: Value (*1,000 dollars*)	***	***	***	***	***
U.S. processors' share (*percent*)	***	***	***	***	***
Importers' share (*percent*)	***	***	***	***	***
Ratio of imports from Canada to U.S. production (percent)	***	***	***	***	***

[1] Exports to the United States reported by Canadian processors were used since U.S. shipment data from U.S. importers were incomplete. There should be minimal differences between such export data and U.S. imports since shelf life of the subject product is limited and frozen inventories are believed to be minimal.

Source: Compiled from data submitted in response to Commission questionnaires.

fell from *** percent, in terms of quantity, in 2000 to *** percent in January-September 2003. Reported unit values of Canadian exports to the United States increased steadily by *** percent from 2000 to 2002 and by *** percent in January-September 2003 compared to January-September 2002. Reported unit values of U.S. processor's U.S. shipments rose by a *** 2.2 percent from 2000 and 2002 and by 0.7 percent during the interim periods. For most periods, the Canadian export unit values were at least *** cents lower than those reported by the domestic processors.

Empire alleges that Chai, in particular, by "using low priced dumped boneless skinless breasts as the lead item" has "penetrated many of the larger kosher retail shops that sell a substantial portion" of kosher chicken in the U.S. market.[6] Domestic processor *** alleges that U.S. importers in many (but not all) cases do not pass on what it believes to be dumped pricing by the Canadian processors but rather are able to maintain price pressure on the domestic industry by being able to, as necessary, price at lower

[6] Petition, p. 18.

price points, both for the breast meat which is a less desirable product in their target markets within the ultra-Orthodox community and for whole and cut-up chicken.[7] In other words, there is a possibility that U.S. importers may be benefitting from a larger markup on the imported than on the domestic product. According to ***, the markup is not typically passed on at the retail level in order to expand sales since the kosher market is limited in size. *See* the section of this report entitled "Prices" for data on domestic processors' and U.S. importers' reported selling prices, which, in essence, represent sales at the retail level. As discussed earlier, the Canadian processors sell directly to U.S. distributors (table I-1) and pricing from Empire does not differ across channels of distribution (i.e., distributors and retailers are charged the same price).[8]

[7] Staff conversation with ***, January 6, 2004.

[8] Petition, p. 19.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

In 2002, raw material costs for U.S. producers accounted for approximately *** percent of the cost of goods sold. The main raw materials used in the processing of kosher chicken include chicken,[1] salt, and water.

Transportation Costs to the U.S. Market

Transportation costs for kosher chicken from Canada to the United States (excluding U.S. inland costs) are estimated to be approximately 0.67 percent of the cost of kosher chicken. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.

U.S. Inland Transportation Costs

U.S. inland transportation costs as a percentage of the total delivered cost of kosher chicken vary by firm. For example, *** reported that inland transportation costs account for approximately *** percent of the total delivered cost of kosher chicken. On the other hand, *** reported inland transportation costs accounted for *** percent of total costs.[2] For importers, transportation costs of kosher chicken for delivery within the United States range from *** percent to *** percent, with an average of approximately 3.0 percent.[3]

Exchange Rates

The U.S. dollar floated freely against the Canadian dollar during the period of examination. Average quarterly data reported by the International Monetary Fund indicate that the nominal value of the U.S. dollar appreciated steadily against the Canadian dollar from the first quarter of 2000 to a high during the first quarter of 2002, appreciating 8.8 percent during that time. The U.S. dollar then depreciated irregularly through the third quarter of 2003. Overall, the nominal value of the U.S. dollar depreciated by 5.3 percent over the period examined (figure V-1).

The real value of the U.S. dollar vis-a-vis the Canadian dollar followed a similar pattern during the period examined. After appreciating 6.7 percent from the first quarter of 2000 to a high point during the fourth quarter of 2001, it depreciated irregularly by the third quarter of 2003. Overall, the real value of the U.S. dollar had depreciated by 0.22 percent against the Canadian dollar from the first quarter of 2000 to the third quarter of 2003 (figure V-1).

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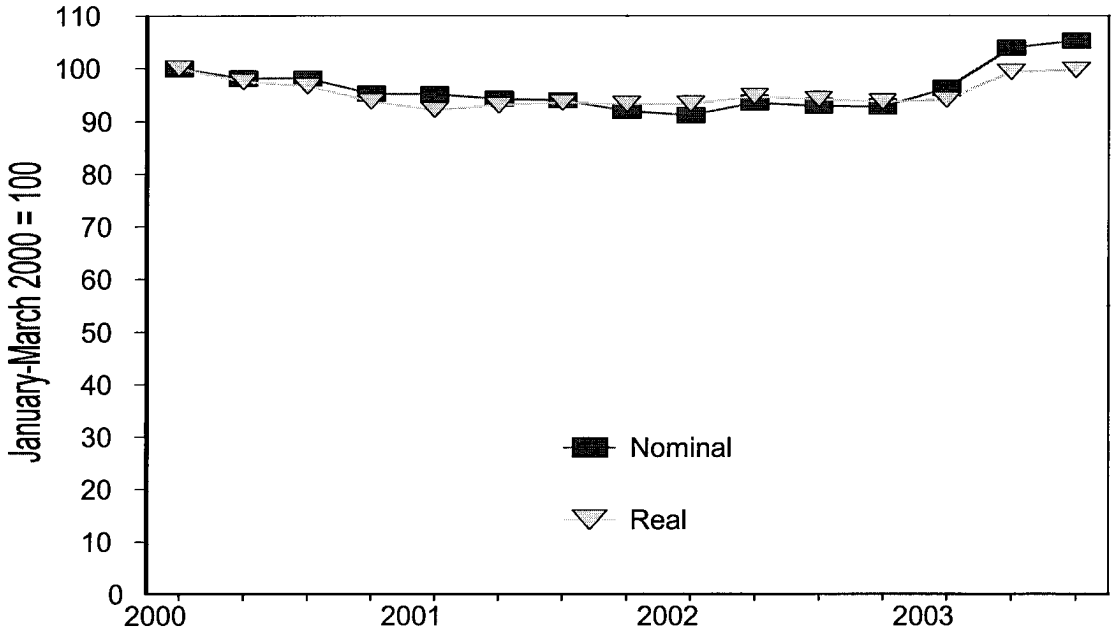
[1] Costs included and associated with the chicken component of raw materials include breeder/hatching expenses, feed mill expenses, liver bird expenses, live haul/grow-out expenses, and finished goods.

[2] *** did not provide data related to inland transportation costs.

[3] The average percentage of total delivered costs accounted for by U.S. inland transportation costs is based upon data reported by four (of ten) importers. The remaining six importers did not provide information related to inland transportation costs.

Figure V-1
Exchange rates: Indices of the nominal and real price of the U.S. dollar relative to the Canadian dollar, by quarters, first quarter 2000 to third quarter 2003



Source: International Monetary Fund, *International Financial Statistics*, November 2003.

PRICING PRACTICES

Pricing Methods, Discounts, and Sales Terms

U.S. processors determined prices in a variety of different ways during the period examined. For example, *** reported that it priced its kosher chicken based upon market demand. Similarly, ***. *** used both price lists and transaction-by-transaction negotiations, while *** priced its kosher chicken using only transaction-by-transaction negotiations. According to questionnaire responses, *** did not offer discounts on sales of kosher chicken during the period examined. However, *** offered discounts based upon quantity purchased. Sales terms for *** were typically net 30, while *** maintained sales terms of net 10 and net 7, respectively. Two U.S. processors quoted on a delivered basis, one quoted on an f.o.b. basis, and one quoted on an f.o.b. warehouse basis. Also, U.S. processors generally arranged transportation to customer premises.

Seven of ten responding importers reported that prices were set using transaction-by-transaction negotiations, while two reported set prices. One importer, ***, had no commercial sales during the period examined. Regarding discounts, six of ten importers reported that they did not offer discounts on kosher chicken. Two importers reported that discounts were negotiated and one importer reported a quantity discount scheme. Again, *** had no commercial sales during the period examined. Two importers maintained sales terms of net 14, two maintained net 21, and three maintained net 30. One importer stated that sales terms vary and two importers did not report data related to sales terms. All responding importers quoted kosher chicken on a delivered basis.

Contracts

For both U.S. processors and importers, the vast majority of kosher chicken sales take place in the spot market. For example, two U.S. processors reported that, during the period examined, *** percent of their sales took place in the spot market. The other two U.S. processors reported that spot market sales accounted for *** percent and *** percent of total sales; the remaining portion of their sales took place on the basis of short-term contracts. Of these two processors, one reported a typical contract duration of 45 days while the other reported a one-year duration. Typically, short-term contracts fixed both quantity and price during the period examined and could not be renegotiated; one importer maintained meet-or-release provisions and one did not. Neither U.S. processors nor importers reported any sales via long-term contracts. Regarding delivery lead times, two processors reported that all orders, whether produced to order or delivered from inventory, were shipped within two days. One processor reported a 30-day lead time and one processor did not provide information related to lead times.

Six of ten responding importers reported that 100 percent of their sales took place in the spot market, one reported a 50/50 spot market/short-term split, and one reported that short-term contracts accounted for 100 percent of sales. For the two importers reporting sales via short-term contract, one maintained a contract duration of three months and one did not have a standard contract length. Typically, contracts fixed both quantity and price and were renegotiated at contract end; no importers attached meet-or-release provisions to their short-term contacts. Two importers did not provide information related to contract sales. Generally, importers arranged for transportation to customer premises, with lead times averaging less than one week.

PRICE DATA

The Commission requested U.S. processors and importers of kosher chicken to provide quarterly quantity and f.o.b. value data for kosher chicken that was shipped to unrelated customers in the U.S. market. Data were requested for the period January 2000 through September 2003. The products for which pricing data were requested are as follows:

***Product 1.*–Bulk pack fresh 3-pound kosher whole chickens**
***Product 2.*–Bulk pack fresh 3.5-pound kosher whole chickens**
***Product 3.*–Bulk pack fresh boneless, skinless, kosher chicken breasts**
***Product 4.*–Bulk pack frozen boneless, skinless, kosher chicken breasts**

Two U.S. producers[4] and eight importers[5] provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products or for all quarters. Based upon data provided in the Commission's processors' questionnaires, pricing data reported by U.S. processors accounted for approximately *** percent of U.S. commercial shipments of kosher chicken during 2002. Similarly, pricing data reported by importers accounted for 19.1 percent of U.S. imports of kosher chicken from Canada during 2002.

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[4] U.S. processors Empire and AgriProcessors provided usable pricing information.

[5] *** provided usable pricing information. *** tended to report pricing for the second half of the period examined only. *** did not report quantity or volume information for product 4. *** did not report quantity or volume information for product 1 or product 2.

Price Trends and Comparisons

Data on f.o.b. selling prices and quantities for kosher chicken sold by both U.S. processors and importers are shown in tables V-1 through V-4 and figures V-2 through V-5, respectively.

Table V-1
Kosher chicken: Weighted-average f.o.b. prices and quantities of domestic and imported product 1, and margins of underselling/(overselling), by quarter, January 2000-September 2003

* * * * * * *

Table V-2
Kosher chicken: Weighted-average f.o.b. prices and quantities of domestic and imported product 2, and margins of underselling/(overselling), by quarter, January 2000-September 2003

* * * * * * *

Table V-3
Kosher chicken: Weighted-average f.o.b. prices and quantities of domestic and imported product 3, and margins of underselling/(overselling), by quarter, January 2000-September 2003

* * * * * * *

Table V-4
Kosher chicken: Weighted-average f.o.b. prices and quantities of domestic and imported product 4, and margins of underselling/(overselling), by quarter, January 2000-September 2003

* * * * * * *

Figure V-2
Kosher chicken: Weighted-average f.o.b. prices of domestic and imported Canadian product 1, January 2000-September 2003

* * * * * * *

Figure V-3
Kosher chicken: Weighted-average f.o.b. prices of domestic and imported Canadian product 2, January 2000-September 2003

* * * * * * *

Figure V-4
Kosher chicken: Weighted-average f.o.b. prices of domestic and imported Canadian product 3, January 2000-September 2003

* * * * * * *

Figure V-5
Kosher chicken: Weighted-average f.o.b. prices of domestic and imported Canadian product 4, January 2000-September 2000

* * * * * * *

Product 1

Weighted average prices for domestic and Canadian kosher chicken sold in the U.S. market fluctuated during the period January 2000 through September 2003. Prices for U.S.-produced product 1 increased from the first quarter of 2000 to a peak during the third quarter of 2000, rising approximately *** percent in that time. Prices then declined irregularly through the third quarter of 2003, ending *** percent lower at the end of the period examined than at the beginning.

Prices for Canadian product 1 increased by *** percent from the first quarter of 2000 to a high of $*** during the second quarter of 2000, and then fluctuated in a band between $*** and $*** throughout much of the period examined. Overall, prices for Canadian product 1 were *** percent lower at the end of the entire period examined than at the beginning.

As shown in table V-1, price comparisons for product 1 between the United States and Canada were possible for a total of 15 quarters during the period examined. During the period examined, the price of product 1 imported from Canada was above the price of U.S.-produced product 1 during 14 quarters. Margins of overselling ranged from 8.8 percent to 31.6 percent. During the one quarter in which the price of Canadian product 1 was below the price of U.S.-produced product 3, the margin of underselling was 4.1 percent.

Product 2

Prices for domestic product 2 rose irregularly from January-March 2000 to a high during July-September 2001, rising *** percent during that time. Prices then declined *** percent through the July-September 2003. Overall, prices of domestic product 2 were *** percent lower at the end of the period than at the beginning.

Prices for Canadian product 2 fell *** percent from a high of *** during the first 5 quarters of the period to *** during the second quarter of 2001. From that point, prices then decreased irregularly by the end of the period, declining *** percent during that time. Overall, prices were *** percent lower at the end of the entire period examined than at the beginning.

As shown in table V-2, price comparisons for product 2 between the United States and Canada were possible for a total of 15 quarters. During this period, the price of Canadian product 2 was above the price of U.S.-produced product 2 during all quarters. Margins of overselling ranged from 10.1 percent to 75.5 percent.

Product 3

Prices for domestic product 3 declined irregularly from January-March 2000 through April-June 2002, declining *** percent during that time. Prices then increased by *** percent by July-September 2003. Overall, prices declined by *** percent over the entire period examined.

Prices for Canadian product 3 declined irregularly from January-March 2000 through January-March 2003, declining *** percent during that time. Prices then rose by *** percent by the end of the July-September 2003 period. Overall, prices were *** percent lower at the end of the entire period examined than at the beginning.

As shown in table V-3, price comparisons for product 3 between the United States and Canada were possible for a total of 15 quarters during the period examined. During the period examined, the price of product 3 imported from Canada was above the price of U.S.-produced product 3 during all quarters. Margins of overselling range from 4.0 percent to 44.7 percent.

Product 4

Prices for domestic product 4 increased irregularly from January-March 2000 through October-December 2001, increasing *** percent during that time. Prices then declined by *** percent through July-October 2003. Overall, prices were *** percent lower at the end of the entire period than at the beginning.

Prices for Canadian product 4 declined from January-March 2000 to a period low during October-December 2001, declining by *** percent during that period. Prices then increased by *** percent by the end of the July-September 2003 period. Overall, prices declined by *** percent from the beginning of the entire period examined to the end.

As shown in table V-4, price comparisons for product 4 between the United States and Canada were possible for a total of 15 quarters during the period examined. During this period, the price of product 4 imported from Canada was below the price of U.S.-produced kosher chicken during four quarters. During these quarters, the margin of underselling ranged from 0.3 percent to 7.2 percent. During the eleven quarters in which the price of Canadian product 4 exceeded that of domestic kosher chicken, margins of overselling ranged from 4.1 percent to 24.4 percent.

LOST SALES AND LOST REVENUES

The Commission requested U.S. processors of kosher chicken to report any instances of lost sales or revenues they experienced due to competition from imports of kosher chicken from Canada during January 2000 through September 2003. *** reported that it had lost sales. The ten lost sales allegations totaled $*** and involved *** pounds of kosher chicken. No lost revenue allegations were reported by U.S. processors. Commission staff contacted seven purchasers; a summary of the information obtained from *** and from purchasers is shown in table V-5 below.

Table V-5
Kosher chicken: U.S. processors' lost sales allegations

* * * * * * *

Two purchasers added additional comments to their responses. For example, ***, which disagreed with the lost sales allegation, added: "***." In response to a Commission addendum to the lost sales allegation form, *** responded that it did not switch purchases of kosher chicken from U.S. processors to suppliers of kosher chicken imported from Canada. Similarly, *** wrote that U.S. producers did not reduce their prices of kosher chicken in order to compete with the price of kosher chicken imported from Canada.

*** also disagreed with the lost sales allegation, adding: "***." *** also added: "***." Similarly, in response to the Commission's lost sales addendum, *** replied that it had switched from domestic kosher chicken to Canadian kosher chicken. Adding that price was not the reason, it wrote: "***." *** also acknowledged that U.S. producers reduced their prices of kosher chicken to meet Canadian prices, adding: "***."

PART VI: FINANCIAL EXPERIENCE OF U.S. PROCESSORS AND FARMERS

BACKGROUND

Five domestic processors accounted for all known production of kosher chicken in the United States during the reporting period: Empire, AgriProcessors, Vineland, David Elliot, and King David. Empire, AgriProcessors, and Vineland provided financial data on their processing operations for kosher chicken.[1] Those three firms accounted for approximately *** percent of kosher chickens processed in the United States in 2002.[2]

Originally founded in 1938, Empire Kosher is a privately held kosher poultry processing company. It operates the world's largest kosher poultry processing plant in Mifflintown, PA, which includes a hatchery and a feed mill. Both chickens and turkeys are processed by Empire in the same facility ***.[3] Empire packages under its own label but also processes and packages kosher chickens for Alle Processing of Brooklyn, NY, and other Chasidic groups under private label.[4] Empire was purchased by J.W. Childs, a private equity firm in Boston, MA, in 1997 and sold in November 2003 to E. K. Holdings, Inc., a private group of investors led by Palisades Associates, Inc., a merchant bank located in Bethesda, MD. Under the terms of the sale, the processor will restructure both its equity and debt, and E. K. Holdings will invest substantial new capital into the business.[5] Empire Kosher's food product line is all kosher, ranging from fresh chicken cutlets to fat-free cooked turkey breast and pizza. These goods are distributed to kosher butcher shops, supermarkets, delis, and gourmet stores both in the United States and overseas.

Vineland is a privately held kosher chicken processing facility, owned by the Raab family and located in Vineland, NJ. AgriProcessors is a privately held kosher chicken, beef, lamb, and veal processing facility owned by the Rubashkin family in Postville, IA. AgriProcessors processes kosher turkey ***. David Elliot is a privately held kosher chicken processor owned by Moshe and Shlomo Fink in Scranton, PA.

King David Kosher, a kosher chicken plant owned by South African businessman Jonathan Imerman and located in Macon, GA, closed in April 2002 after being open only 4 months.[6] Management was unable to secure adequate kosher certification for the facility.[7] Mr. Imerman has no plans to re-open the Macon facility.[8]

Commission staff has learned that new domestic kosher chicken processing capacity may soon be in operation. According to a statement by ***, ***.[9] Respondents also provided information that

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[1] The fiscal year ends for the processors are as follows: Empire ***, AgriProcessors ***, and Vineland ***.

[2] Petition, p. 11.

[3] Conference transcript, p. 59.

[4] Petition, p. 11, and exh. 9, and Meir, Y., "Empire Poultry Eyes Diversification and New Products as Key to Future Growth," *Kosher Today*, Sept. 9, 2002, at *www.koshertoday.com* (retrieved Dec. 10, 2003).

[5] Kozar, Susie, "Empire Kosher Poultry sold," *The Sentinel* (Lewistown, PA) newspaper, Nov. 4, 2003.

[6] "Georgia Officials Mull Over Future of Kosher Poultry Plant," *Kosher Today*, March 17, 2003, at *www.koshertoday.com* (retrieved Dec. 10, 2003). King David's processing plant was purchased from Cagle's Inc., a large, integrated, non-kosher chicken processor. See submission from Jonathan Imerman to Commission staff, December 30, 2003.

[7] Peters, Andy and Linda S. Morris, "State: Grant was worth risk – Economic development officials admit kosher chicken plant plan flawed," *The Telegraph* (Macon, GA) newspaper, March 23, 2003.

[8] Conference transcript, p. 129.

[9] Respondents' postconference brief, exh. 3, and conference transcript, p. 100.

another kosher chicken processor is opening in Kiryas Joel (Monroe), NY.[10] According to Moishe Friedman of Marvid, the Kiryas Joel facility will also process kosher chicken under the CRC certification for the Satmar community.[11]

Chickens destined for the kosher market are typically raised by farmers (growers) with no ownership ties to the processors. Empire, AgriProcessors, and Vineland each have contracts with local growers in which the grower provides the buildings and the labor for taking care of the chickens. Unlike Empire, AgriProcessors and Vineland do not own their own hatcheries, but instead outsource to local hatcheries according to their own breed specifications.[12]

OPERATIONS OF U.S. KOSHER CHICKEN PROCESSORS

Combined income-and-loss data for U.S. kosher chicken processors are presented in table VI-1. Individual income-and-loss data for Empire, AgriProcessors, and Vineland are presented in tables VI-2 to VI-4, respectively. Table VI-1 shows that the ratio of aggregate operating income to sales fell from *** percent in 2000 to *** percent in 2002. Partial period data show a decrease in the aggregate *** margin from *** percent in January-September 2002 to *** percent in January-September 2003. The combined processors reported a ***-percent decline in net sales value during 2000-02, while cost of goods sold (COGS) rose *** percent. Net sales value increased *** percent between January-September 2002 and January-September 2003, while COGS rose only *** percent over the same period.

Table VI-1
Results of operations of U.S. processors in the production of kosher chicken, fiscal years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table VI-2
Results of operations of Empire in the production of kosher chicken, fiscal years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table VI-3
Results of operations of AgriProcessors in the production of kosher chicken, fiscal years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

Table VI-4
Results of operations of Vineland in the production of kosher chicken, fiscal years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

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[10] Respondents' postconference brief, exh. 3. Media reports state that as of late December 2003, all that remained before opening the Kiryas Joel plant was the installation of equipment that will pretreat wastewater from poultry processing.

[11] Conference transcript, p. 100.

[12] Conference transcript, pp. 22-23.

No variance analysis for U.S. processors of kosher chicken is presented here. A variance analysis provides an assessment of changes in profitability as related to changes in pricing, cost, and volume. However, a variance analysis is sensitive to price, cost, and volume changes due to the product mix of subject merchandise, both within a company and between companies. In this investigation, subject merchandise consists of whole chickens and parts (i.e., legs and breasts), each of which have different pricing structures. In addition, balancing kosher chicken sales (i.e., selling certain chicken parts at a low price to eliminate inventory after parts with higher demand are already sold) raises the possibility of cost allocation shifting between products, which would distort the results of the analysis. Therefore, a variance analysis in this investigation may not accurately represent actual volume, cost, and price changes in the industry during the reporting period.

OPERATIONS OF U.S. KOSHER CHICKEN FARMERS

Combined income-and-loss data for U.S. kosher chicken farmers are presented in table VI-5. The *** farmers providing usable data *** represent a limited sample size when compared to all U.S. farmers producing for the kosher chicken market.[13]

Table VI-5
Results of operations of farmers in the production of kosher chicken, fiscal years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

INVESTMENT IN PRODUCTIVE FACILITIES, CAPITAL EXPENDITURES, AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' data on capital expenditures, research and development (R&D) expenditures, and the value of their property, plant, and equipment for their kosher chicken operations are shown in table VI-6. ***.

Table VI-6
Value of assets, capital expenditures, and research and development expenses of U.S. processors of kosher chicken, fiscal years 2000-02, January-September 2002, and January-September 2003

* * * * * * *

CAPITAL AND INVESTMENT

The Commission requested that U.S. processors and farmers describe any actual or potential negative effects of imports of kosher chicken from Canada on their firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Responses received are presented in appendix D.

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[13] Empire reports that it currently has *** farmers under contract to grow chickens. The *** farmers reporting data represent approximately *** percent of the chickens, by headcount, that were processed by Empire in the company's latest full fiscal year. Emails to Commission staff from Harry Geedey, Empire's Vice President of Sales and Marketing, January 7, 2004.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V, and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE INDUSTRY IN CANADA

The Canadian industry consists of Chai and Marvid,[1] both of which provided responses to Commission questionnaires. Table VII-1 lists the plant locations of each firm and the shares of production and U.S. exports accounted for by each in 2002. Neither Chai nor Marvid process non-kosher chicken;[2] however, Marvid also processes kosher ducks and kosher turkeys ***.[3] ***. ***.[4]

Table VII-1
Kosher chicken: Canadian processors, locations of processing facilities, production, and exports to the United States, 2002

Firm	Location of Canadian processing facility	Production (*1,000 pounds*)	Share of production (*percent*)	U.S. exports (*1,000 pounds*)	Share of U.S. exports (*percent*)
Chai	Toronto, Ontario	***	***	***	***
Marvid	Montreal, Quebec	***	***	***	***
Total	--	***	100.0	***	100.0

Source: Compiled from data submitted in response to Commission questionnaires.

Table VII-2 presents aggregate data for the Canadian industry for the entire period reviewed during the preliminary phase of this investigation. There is a home market for the kosher chicken industry in Canada: in 2002, home market shipments and export shipments to the United States each

[1] Chai and Marvin are the only two kosher chicken processors in Canada. Conference transcript, p. 130.

[2] Chai indicated that about *** percent of its output of chicken is deemed to be non-kosher and sold into non-kosher distribution channels.

[3] In 2002, kosher chicken accounted for *** percent of Marvid's sales, with kosher turkey and kosher ducks accounting for *** percent and *** percent, respectively.

[4] Responses to the foreign producers' questionnaire by Chai and Marvid.

accounted for about *** of total shipments by the Canadian industry. There are, however, no markets for Canadian-processed kosher chicken other than the United States.[5]

Table VII-2
Kosher chicken: Canadian production capacity, production, shipments, and inventories, 2000-02, January-September 2002, January-September 2003, and projected 2003-04

* * * * * * *

Exports to the United States of the subject product have grown steadily through the period reviewed (table VII-2). Royal Palate Foods, a broker for Chai, testified at the Commission's conference that many of its sales are into Lubavitch[6] communities on the U.S. West Coast and in rural areas. The Jewish populations in these areas have a larger proportion of Lubavitch as a result of the historical trend of Lubavitchers sending out rabbis to encourage non-observant Jews in these areas to become more religious. Royal Palate Foods was able to obtain a Lubavitch plumba for chicken manufactured at Chai that is attached to the chicken along with the COR certification; this, along with demand for a product with fewer feathers, is reported to have sparked demand in the United States for Chai-processed kosher chicken.[7] Respondents report that such sales comprise "the majority" of Chai's U.S. exports "with a smaller portion sold in the New York metropolitan area under COR certification which is accepted in certain religious communities that do not accept Empire chicken."[8] Petitioner states that Chai expanded its presence in the U.S. market in 2002 with sales to Miami, Atlanta, and Los Angeles.[9] The other Canadian processor, Marvid, has "traditionally" (i.e., since the 1996-97 period) supplied kosher chicken to the Monroe community, a group in upstate New York that falls within the Satmar sect. Marvid also negotiated a contract to supply CRC-certified chicken to G&G Processing.[10] (As indicated earlier in this report, both the Monroe community and G&G Processing are building their own slaughterhouses.) ***.[11]

The tabulation below shows Canadian processors' U.S. exports to the United States, by firm, for 2000-02, January-September 2002, and January-September 2003. As shown, U.S. exports by Chai *** from 2000 to 2001 and then rose by *** from 2001 to 2002. ***, U.S. exports by Marvid increased by slightly less than *** percent from 2000 to 2001 and then fell by *** percent from 2001 to 2002. U.S. exports by both firms increased in interim 2003 compared to interim 2002.

* * * * * * *

The industry's projections for 2003-2004 are *** (table VII-2). Capacity, production, and U.S. exports are expected to *** in 2004 compared to 2002. The *** in these indicators is a result of projections provided by *** that forecast a *** in its sales to the United States as a result of ***. ***

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[5] Consequently, Canadian-produced kosher chicken is not subject to antidumping findings or remedies in any WTO-member countries.

[6] The Lubavitch community is considered part of the ultra-orthodox Chasidic movement.

[7] Conference transcript, p. 107. ***. Staff conversation with ***, January 7, 2003.

[8] Respondents' postconference brief, p. 20.

[9] Petition, p. 16.

[10] Conference transcript, pp. 99-100.

[11] Letter, dated December 29, 2003, from ***.

projects *** capacity and *** about *** pounds in the volume slaughtered with *** shipments to both the home market and to the United States.

U.S. IMPORTERS' INVENTORIES

With the exception of one firm (***), no responding U.S. importer reported maintaining inventories of kosher chicken from Canada. As indicated earlier in this report, *** subject imports are of the fresh product.

APPENDIX A

FEDERAL REGISTER NOTICES

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7850, Bethesda, MD 20892. (301) 435–1251. *bannerc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30719 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 11, 2003, 1 p.m. to December 11, 2003, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 28, 2003, 68 FR 66841–66842.

The meeting will be held on December 29, 2003, from 1 p.m. to 3 p.m. The location remains the same. The meeting is closed to the public.

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30722 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Cancellation of meeting.

SUMMARY: The Bureau of Reclamation is canceling the Adaptive Management Work Group Meeting scheduled for January 7–8, 2004, in Phoenix, Arizona due to additional time required to prepare the Fiscal Year 2005 budget and other agenda items. The meeting will be rescheduled for March 2004 and will be noticed in the **Federal Register** when arrangements have been made.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: November 26, 2003.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 03–30680 Filed 12–10–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1062 (Preliminary)]

Kosher Chicken From Canada

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1062 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of kosher chicken from Canada, provided for in subheadings 0207.11.00, 0207.12.00, 0207.13.00, or 0207.14.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by January 15, 2004. The Commission's views are due at Commerce within five business days thereafter, or by January 23, 2004.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background—This investigation is being instituted in response to a petition filed on December 1, 2003, by Empire Kosher Poultry, Inc., Mifflintown, PA.

Participation in the investigation and public service list—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on December 22, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than December 18, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 29, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: December 8, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30729 Filed 12–10–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreements in *Philip Services Corporation* Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA)

Notice is hereby given that on December 4 and/or 7, 2003, four proposed Settlement Agreements were filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Philip Services Corporation*, No. 03–37718–H2–11 (Bankr. S.D. Tex.). The Settlement Agreements among the United States on behalf of U.S. EPA, the States of Michigan, South Carolina, Alabama, and Washington, and Debtor Philip Services Corporation and its affiliated Debtors resolve CERCLA and RCRA claims as provided in the Settlement Agreements for facilities located on Schaefer Highway in Detroit, Michigan; Vernsdale Road in Rock Hill, South Carolina; 27th Avenue in Birmingham, Alabama; the Pasco Sanitary Landfill in Pasco, Washington; the Pier 91 Site in Seattle, Washington; and the Landsburg Mine Site near Ravensdale, Washington.

Under the Michigan Settlement Agreement, the Governmental Parties will receive the benefit of $559,126 from financial assurance and $823,000 to be paid over five years. Under the South Carolina Settlement Agreement, the Governmental Parties will receive the benefit of $2,981,934 in financial assurance and $1.3 million to be paid over five years. Under the Alabama Settlement Agreement, the Governmental Parties will receive the benefit of $500,000 over five years. Under the Washington Agreement, Debtors are paying $1,000,050 and providing an additional allowed general unsecured claim of $45,000,000 for the Pasco Sanitary Landfill site, paying $740,000 for the Pier 91 Site, and paying $150,000 towards the Landsberg Mine Site.

The Department of Justice will receive comments relating to the Settlement Agreements if such comments are received by the close of Business on December 18, 2003. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, should refer to *In re Philips Services Corporation*, No. 03–37718–H2–11 (Bankr. S.D., Tex.), D.J. Ref. 90–11–3–06852/1, and may be faxed to (202) 514–0097, Attn: Alan Tenenbaum. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreements may be examined at the Office of the United States Attorney for the Southern District of Texas, 910 Travis, Suite 1500, Houston, TX 77005, and at the United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. During the public comment period, the Settlement Agreements may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Settlement Agreements may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S., Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the a;mount of $8.00 for the Michigan Settlement Agreement, $8.25 for the South Carolina Settlement Agreement, $8.25 for the Alabama Settlement Agreement, and $10.50 for the Washington Settlement Agreement and related documents (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–30660 Filed 12–10–03; 8:45 am]

BILLING CODE 4410–15–M

MARINE MAMMAL COMMISSION

Committee Management; Notice of Establishment; Advisory Committee on Acoustic Impacts on Marine Mammals

AGENCY: Marine Mammal Commission.

ACTION: Charter filed for the Advisory Committee on Acoustic Impacts on Marine Mammals.

SUMMARY: The Chairman of the Marine Mammal Commission (Commission) has determined that the establishment of the Advisory Committee on Acoustic Impacts on Marine Mammals (Committee) is necessary and in the public interest in connection with fulfilling Commission mandates created under the Omnibus Appropriations Act of 2003 (Pub. L. 108–7). This determination follows consultation with the Office of Management and Budget and with the Committee Management Secretariat, General Services Administration (GSA).

Scope of Order

The product covered by this order is canned pineapple fruit (CPF). CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Amended Final Determination

In accordance with section 751(a) the Tariff Act of 1930, as amended, (the Act), on November 19, 2003, the Department published its final results of the antidumping duty administrative review of CPF from Thailand (*Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 68 FR 65247, (*Final Results*)).

1. Vita Food Factory (1989) Co., Ltd. (Vita)

On November 20, 2003, Vita alleged that a ministerial error had been made regarding the Department's final margin calculation. *See* Ministerial Error Letter from Vita Re: Canned Pineapple Fruit from Thailand: The Seventh Administrative Review for period of July 1, 2001 to June 30, 2002 (November 20, 2003). In accordance with section 751(h) of the Act, we have determined that a ministerial error was made in determining the calculation of Vita's variable overhead cost factor. *See* Memorandum to Holly Kuga; Subject: Seventh Administrative Review of Canned Pineapple Fruit from Thailand RE: Ministerial Error Allegation Vita Food Factory Ltd. (December 17, 2003). Pursuant to section 751(h) of the Act, we have corrected the error and are amending the final results of review accordingly. The corrected margin for Vita is 1.77 percent. *See* the Memorandum from Monica Gallardo to the File, Revised Analysis Memorandum for Vita Food Factory Ltd. Re: Amended Final Results of Seventh Administrative Review of Canned Pineapple Fruit from Thailand (December 17, 2003).

2. Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd.'s (collectively, Dole)

In addition, on November 20, 2003, we received timely ministerial error allegations from Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union (the petitioners) regarding Dole. We have determined that the petitioners' allegations with regard to Dole do not constitute ministerial errors as defined by section 351.224(f) of the Department's regulations. *See* Memorandum to Holly Kuga; Subject: Seventh Administrative Review of Canned Pineapple Fruit from Thailand RE: Ministerial Error Allegations for Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd.'s (December 17, 2003).

The Department shall determine, and the U.S. Customs and Border Protection shall assess, antidumping duties on all appropriate entries based on the amended final results. For details on the assessment of antidumping duties on all appropriate entries, *see Final Results*.

Dated: December 17, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–32226 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–849]

Notice of Initiation of Antidumping Investigation: Ready-to-Cook Kosher Chicken and Parts Thereof From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Investigation.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Magd Zalok at (202) 482–4162 or Howard Smith at (202) 482–5193, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Petition

On December 1, 2003, the Department of Commerce (the Department) received a petition against imports of ready-to-cook Kosher chicken and parts thereof from Canada, filed in proper form by Empire Kosher Poultry, Inc. (the petitioner). On December 9, 2003, the Department issued a questionnaire to the petitioner requesting additional information and clarification of certain information contained in the petition. The Department received a response to its questionnaire on December 11, 2003.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of ready-to-cook Kosher chicken and parts thereof from Canada are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV) within the meaning of section 731 of the Act, and that such imports from Canada are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party, as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petition."

Scope of Investigation

The merchandise covered by this investigation is ready-to-cook chicken from Canada, whether fresh, chilled or frozen and whether whole or cut-up in pieces, that has been certified as Kosher or Glatt Kosher. Symbols indicating kosher certification include, but are not limited to, COR, MK, OU, CRC. Ready to cook Kosher and Glatt kosher chicken is also identified by the number of the agricultural plant in Canada from which the product originated. For instance, ready-to-cook Kosher chicken manufactured in plant number 24 carries the COR symbol representing the Canadian Jewish Congress of Toronto.

Excluded from the scope of this investigation are Kosher or Glatt Kosher chicken wings (if unattached to any other chicken part) and offal, such as necks, gizzards, livers, and hearts. Cooked chicken or chicken parts, ready to cook non-kosher whole chicken or chicken parts are outside the scope of this investigation. The merchandise subject to this investigation is classifiable under subheadings 0207.11.00.20, 0207.11.00.40, 0207.12.00.20, 0207.12.00.40, 0207.13.00.00, and 0207.14.00.40 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs

purposes, our written description of the scope of this investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Period of Investigation

The anticipated period of investigation (POI) is October 1, 2002, through September 30, 2003.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. The Department shall determine that the petition has been filed by, or on behalf of, the industry if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or ii) determine industry support for the petition using any statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information presented by the petitioner, we have determined that there is a single domestic like product, ready-to-cook Kosher chicken and parts thereof, which is defined in the "Scope of Investigation" section above, and we have analyzed industry support in terms of this domestic like product.

The petition identifies a number of U.S. companies, in addition to Empire Kosher Poultry, Inc., that are engaged in the production of ready-to-cook Kosher chicken. The petition includes a letter from one of these companies, David Elliot Poultry Farm, in which the company states that it supports the petition. The Department received no opposition to the petition from domestic producers of the like product.

Our review of the data provided in the petition indicates that the petitioner has established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Finally, because the petition has established industry support representing over 50 percent of total production of the domestic like product, industry polling is unnecessary. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See also Office of AD/CVD Enforcement Initiation Checklist (Initiation Checklist), Attachment I, Industry Support section, dated December 22, 2003, on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

Export Price and Normal Value

The following is a description of the allegation of sales at LTFV upon which the Department based its decision to initiate this investigation. The sources of data used to derive the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may re-examine the information and revise the margin calculations, if appropriate.

Export Price

The petitioner alleged that the ready-to-cook Kosher chicken and parts thereof produced in Canada by Chai Poultry Inc. (Chai Poultry) and Marvid Poultry Inc. (Marvid) was sold to U.S. distributors prior to importation of the merchandise into the United States. Therefore, the petitioner based U.S. price on export price (EP). The petitioner based EP for ready-to-cook Kosher chicken and parts thereof on price quotes provided to U.S. distributors by Chai Poultry for whole ready-to-cook Kosher chicken, Kosher chicken legs, and boneless skinless Kosher chicken breasts, reduced by estimated freight charges.

[1] *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), *citing Algoma Steel Corp. Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988) ("the ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV").

Normal Value

The petitioner based NV on prices reflected in three invoices that Chai Poultry issued to a Canadian distributor during the POI. These invoices are for sales of whole Kosher chicken, Kosher chicken legs, and boneless skinless Kosher chicken breasts. The petitioner adjusted the invoice prices for movement charges in the home market and differences in the costs incurred to pack merchandise for sale in the U.S. and home markets.

The estimated dumping margins in the petition, based on a comparison between EP and NV, range from 33.33 percent to 39.54 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of ready-to-cook Kosher chicken and parts thereof from Canada are being, or are likely to be, sold at LTFV.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports from Canada of the subject merchandise sold at less than NV.

The petitioner contends that the industry's injured condition is evident in the sales volume and market share lost to unfair imports, as well as in the rapidly declining and depressed U.S. prices. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See the Initiation Checklist, Attachment II.

Initiation of Antidumping Investigation

Based upon our examination of the petition on ready-to-cook Kosher chicken and parts thereof from Canada, we find that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping investigation to determine whether imports of ready-to-cook Kosher chicken and parts thereof from Canada are being, or are likely to be, sold in the United States at LTFV. Unless the deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been made available to the representatives of the Government of Canada. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR § 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than January 15, 2004, whether there is a reasonable indication that imports of ready-to-cook Kosher chicken and parts thereof from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 22, 2003.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–32228 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–807]

Stainless Steel Wire Rod From Spain: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: John Conniff or Timothy Finn, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–1009 and (202) 482–0065, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2003, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from Spain. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, (68 FR 52181).

Pursuant to a request made by Carpenter Technology Corp. (the petitioner), on November 18, 2003, the Department initiated an administrative review of the antidumping duty order on SSWR from Spain for the period September 1, 2002, through August 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 66799 (November 28, 2003).

On December 8, 2003, the petitioner withdrew its request for the administrative review of the order on SSWR from Spain.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws its request within 90 days of the date on which the notice announcing the initiation of the requested review was published. The Department is rescinding the administrative review of the order on SSWR from Spain for the period September 1, 2002, through August 31, 2003, because the petitioner withdrew its request for this administrative review within the 90-day time limit and no other interested parties requested a review of the order on SSWR from Spain for the period September 1, 2002, through August 31, 2003.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 24, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–32230 Filed 12–30–03; 8:45 am]

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APPENDIX B

CONFERENCE WITNESSES

CALENDAR OF THE PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the following investigation:

KOSHER CHICKEN FROM CANADA

Investigation No. 731-TA-1062 (Preliminary)

December 22, 2003 - 9:30 a.m.

The conference was held in Room 101 (Main Hearing Room) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

In Support of the Imposition of Antidumping Duties:

Empire Kosher Poultry, Inc.
Mifflintown, PA

Harry M. Geedey, Vice President of Sales & Marketing, Empire Kosher Poultry, Inc.
Mickey Baugher, Chief Operating Officer, Empire Kosher Poultry, Inc.
Joseph Rubashkin, Vice President, Agriprocessors, Inc.
Shlomo Fink, David Elliot Poultry
Abe Raab, Administrative Manager, Vineland Kosher Poultry

In Opposition to the Imposition of Antidumping Duties:

Kalik Lewin
Washington, DC
on behalf of

Chai Poultry, Inc.
Marvid Poultry Canada, Inc.

Rabbi Zushe Blech
Moishe Friedman, Owner, Marvid Poultry Canada, Inc.
William Pinkerson, Owner, Royal Palate Foods, Inc.
Jonathan Imerman, Founder, King David Poultry, Inc.

Martin J. Lewin--OF COUNSEL

APPENDIX C

SUMMARY DATA

Table C-1
Kosher chicken: Summary data concerning the U.S. market, 2000-02, January-September 2002, and January-September 2003

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APPENDIX D

EFFECTS OF IMPORTS ON U.S. PROCESSORS' AND FARMERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

The Commission requested U.S. processors and farmers to describe any actual or anticipated negative effects of imports of subject kosher chicken from Canada on their return on investment or their growth, investment, ability to raise capital, and existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or their scale of capital investments undertaken as a result of such imports. The responses are as follows:

Actual Negative Effects

Processors

* * * * * * *

Farmers

* * * * * * *

Anticipated Negative Effects

Processors

* * * * * * *

Farmers

* * * * * * *

APPENDIX E

COMPARISON OF U.S. PROCESSORS' AND IMPORTERS' TOP CUSTOMERS

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